Nova Scotia

In the matter of the Regulation of First Investors Corporation Ltd.

REPORT
OFFICE OF THE OMBUDSMAN
HALIFAX, NOVA SCOTIA

February 1990

CONTENTS

		Page
1.	Introduction	1
2.	Jurisdiction	1
3.	Focus of the Investigation	2
4.	Procedure	3
5.	Investigations in Other Provinces	7
6.	The Principal Group - Background	10
7.	The Principal Group - Sales Practices	13
8.	Investment Contracts	18
9.	Investment Contracts in Nova Scotia	22
10.	Securities Legislation in Nova Scotia	23
11.	Administration of Securities Legislation in Nova Scotia	28
12.	Theory of the Primary Regulator	34
13.	Responsibility for the Situation in Nova Scotia	37
14.	Conclusions	40
15.	Recommendations	46
16.	Appendices	
	A. Securities Act RSNS 1967 c.280, Regulations, s.22, s.24	48
	B. National Policy No. 1	58
	C. Code Report (Conclusions)	72
	D. Owen Report (Overview)	95
	E. MacLellan Report (Conclusions and Recommendations)	104
	F. Ombudsman Act	113
	G. Present Securities Regulation in Nova Scotia - Observations	131

Introduction

This report relates to the investigation of complaints received in my office from representatives of the "Victims of Principal", an organization acting on behalf of residents of this Province whose investments in First Investors Corporation Ltd. (FIC) were endangered as a result of the collapse of the Principal Group of Companies in Alberta.

I first undertook an informal investigation respecting the administration of relevant law in Nova Scotia to determine whether or not I should conduct a formal inquiry into the matter.

On the basis of this investigation I have concluded that it would be redundant to convene a formal inquiry with a view to establishing facts beyond those I have already learned.

Jurisdiction

My jurisdiction to investigate the written complaint received by my office is to be found in Section 11(1)(a) of the Ombudsman Act, and more specifically as it relates to the administration of the Securities Act R.S.N.S. 1967 c.280 which was in force until October 15, 1987.*

* See Appendix F.

Focus of the Investigation

The focus of the investigation has been confined specifically to the administration of securities legislation as it relates to the sale of investment contracts by First Investors Corporation Ltd. in this Province.

The Securities Act RSNS 1967 c.280 and its predecessors were in effect during the period when First Investors Corporation Ltd. conducted its business in Nova Scotia and it is this legislation which is directly relevant to this inquiry.

The focus of this inquiry has not been directed to the present Securities Act SNS, 1984 c.11 since most sections of this Act were proclaimed in force on October 15, 1987, some two and a half months after trading in securities of First Investors Corporation Ltd. ceased on July 29, 1987. In regard to this Act, the government deserves recognition for correcting an unsatisfactory situation inherited from previous administrations when it responded positively to representations from the business community in 1984 and proceeded to enact securities legislation more appropriate to changes which had occurred in the investment industry. At the same time, it is a matter of regret that the administration, for what ever

reason, then allowed more than three years to elapse before proclaiming this legislation in force. The delay was unfortunate. If the new legislation, and the Securities Commission established under it, had been in place earlier, some of the financial loss suffered by FIC contract holders might have been avoided. However, a decision on when to proclaim an act in force is a matter of policy and as such, according to the Ombudsman Act, it is not a subject on which an Ombudsman may or should pass judgment.

Similarly, the focus of my investigation has not been on the business activities of the Principal Group in this Province. References to Principal's marketing techniques in this report are intended to provide context and to serve as a reminder that many of the victims of these deceptive practices were elderly people whose life savings have been put at risk, thus adding a human dimension to the Principal affair which has aroused widespread public interest and sympathy.

Procedure

I wish to record that my inquiry has not been impeded or directed in any way by the present Provincial Administration of the Province. On the contrary, administrative officials have been most

cooperative. They have been accessible at all times, have responded expeditiously to every request for information, offered opinion when appropriate, and assisted my investigation in every manner possible.

In the course of this investigation, I have reviewed the relevant legislation including the Corporations Registration Act R.S.N.S. 1967 c.59; the Domestic, Dominion and Foreign Corporations Act, R.S.N.S. 1954 c.74; Securities Act R.S.N.S. 1967 c.280, and amendments; Securities Act R.S.N.S. 1954 c. 261, and amendments; An Act to Amend and Consolidate the Securities Act 1945 c.8, and amendments; The Securities Frauds Protection Act 1930 c.3, and amendments; the Securities Act R.S.N.S. 1967 c.280; the Securities Act 1984 S.N.S. c.11; and the Regulations thereunder; and the Investment Contract Acts of Alberta, British Columbia, and Saskatchewan.

I have contacted persons or offices which I felt might have information relevant to my investigation, including Mr. Curtis Alcorn (Registrar of Joint Stock Companies, Province of Nova Scotia), Mr. Robert B. MacLellan (Chairman, Nova Scotia Securities Commission), Ms. Cathy Mason (formerly Deputy Registrar under the Securities Act), Mr. Nicholas A. Pittas (Registrar

of Securities, Nova Scotia Securities Commission), and, Mr. James Spurr (Financial Counsel, Department of the Attorney General of Nova Scotia).

I have contacted individuals who purchased FIC investment contracts in Nova Scotia, interviewed some in personal meetings, talked to others by telephone, and received written communications.

I have sought and received legal advice from Dr. A. Lloyd Caldwell, Q.C. (Legal Counsel to the Office of Ombudsman), Mr. John McNiven, Q.C., Mr. C. Ian MacLean and Ms. Carol Torfuson in Alberta.

I have met with and consulted Ms. Elizabeth A. Arnold (Office of the Ombudsman, Province of British Columbia), Mr. Ed Chetner (Acting Ombudsman, Province of Alberta), Mr. Gerald MacLellan (Ombudsman, Province of Saskatchewan), Mr. Joseph Bérubé (Ombudsman, Province of New Brunswick), Mr. Charles Ferris (Assistant Ombudsman, Province of New Brunswick), and Mr. Ambrose Peddle (Parliamentary Commissioner, Province of Newfoundland).

It is common knowledge that the failure of the Principal Group has been the subject of a number of investigations. I have consulted several reports of investigations in other provinces as follows:

Final Report of the Inspector, William E. Code, Q.C. In the Matter of Associated Investors of Canada Ltd. and in the Matter of First Investors Corporation Ltd., July 18, 1989 (cited as the Code Report)

Special Report of the Ombudsman, the Role of the Provincial Government in the Regulation of the Principal Group of Companies, Province of Alberta, 1989

Office of the Ombudsman, The Regulation of AIC Ltd. and FIC Ltd. by the B. C. Superintendent of Brokers (The Principal Group Investigation), Public Report No. 19, September 1989 (cited as the Owen Report)

Ombudsman of Saskatchewan, Special Report on the Regulation of FIC Ltd. and AIC Ltd. by the Superintendent of Insurance (The Principal Investigation), November 1989

George LeBlanc, Regulating the Regulators, The First Investors - Principal Trust Fiasco, Paper Presented to the Canadian Bar Association, March 1, 1988, Saint John, N. B.

James E. Anderson, Q.C., and George H. LeBlanc, Report Re: Principal Trust - First Investors Investigation, Canadian Bar Association, New Brunswick Branch, October 8, 1987

Lyman Robinson, Q.C., Report to the Minister in the Matter of the Trade Practice Act, R.S.B.C. 1979 c. 406 and in the Matter of First Investors Corporation Ltd., Associated Investors of Canada Ltd., Principal Consultants Ltd., Principal Savings and Trust Company, and Principal Group Ltd., Province of British Columbia, October 14, 1987 (cited as the Robinson Report)

In addition to the foregoing I have conducted such further inquiries as I considered proper and advisable.

Investigations in Other Provinces

In August, 1987 the Court of Queen's Bench of Alberta appointed William E. Code, Q.C., to investigate the reasons for the financial failure, management, and sales practices of FIC and Associated Investors Corporation (AIC). During the course of the Code Inquiry, Mr. John McNiven, Q.C., in his role of Special Counsel representing the interests of investment contract holders in eastern Canada, attempted to expand the scope of Mr. Code's mandate to include a review of the involvement of the regulatory authorities in the Atlantic Provinces in the business affairs of FIC and AIC. This application was rejected by the Court of Queen's Bench in Alberta. Two Nova

Scotians were subsequently invited to appear and testify under oath in Alberta.

In his Final Report issued in July 1989, Mr. Code blamed both the management of Principal and the provincial government for the collapse.* He concluded that Donald Cormie had acted fraudulently, and he criticized the provincial government for having allowed Principal to stay in business even though some officials knew as early as 1984 that FIC and AIC were in trouble. At about the same time these findings were confirmed by a report of the Ombudsman of Alberta who had been asked by the Provincial Treasurer to undertake an investigation into the role of the provincial government in the regulation of the Principal Group.

The Government of Alberta on receiving the report of Mr. Code, in July, 1989 agreed to compensate investors in FIC and AIC up to a total of 75 per cent of their investment including liquidation and distribution of the assets of the companies. This offer was to be conditional on agreement that any additional compensation from other provinces would be pooled and shared equally by investors in all provinces.

* See Appendix C.

In September 1989 the Ombudsman of British Columbia released the report of an investigation into the activities of FIC and AIC in that province. He blamed the regulators of British Columbia for their negligence in carrying out their duty to protect the public and recommended compensation for investors up to 90 per cent of their holdings. The Government of British Columbia at the same time agreed with this recommendation, but stipulated that it would only participate in a pooling arrangement with those provinces which offered compensation on the same basis as British Columbia.*

In November, 1989 the Ombudsman of Saskatchewan reported on his investigation into FIC and AIC affairs in that province. He concluded that regulators in the province had not fulfilled their statutory obligations, and recommended that Saskatchewan investors be compensated up to 90 per cent of their investment without reference to the proposed pooling arrangement.** The Government of Saskatchewan has not yet indicated what action it will take on that recommendation.

The Parliamentary Commissioner (Ombudsman) of Newfoundland, in response to complaints received from purchasers of investment contracts in that Province, examined files of the Superintendent of

* See Appendix D.
** See Appendix E.

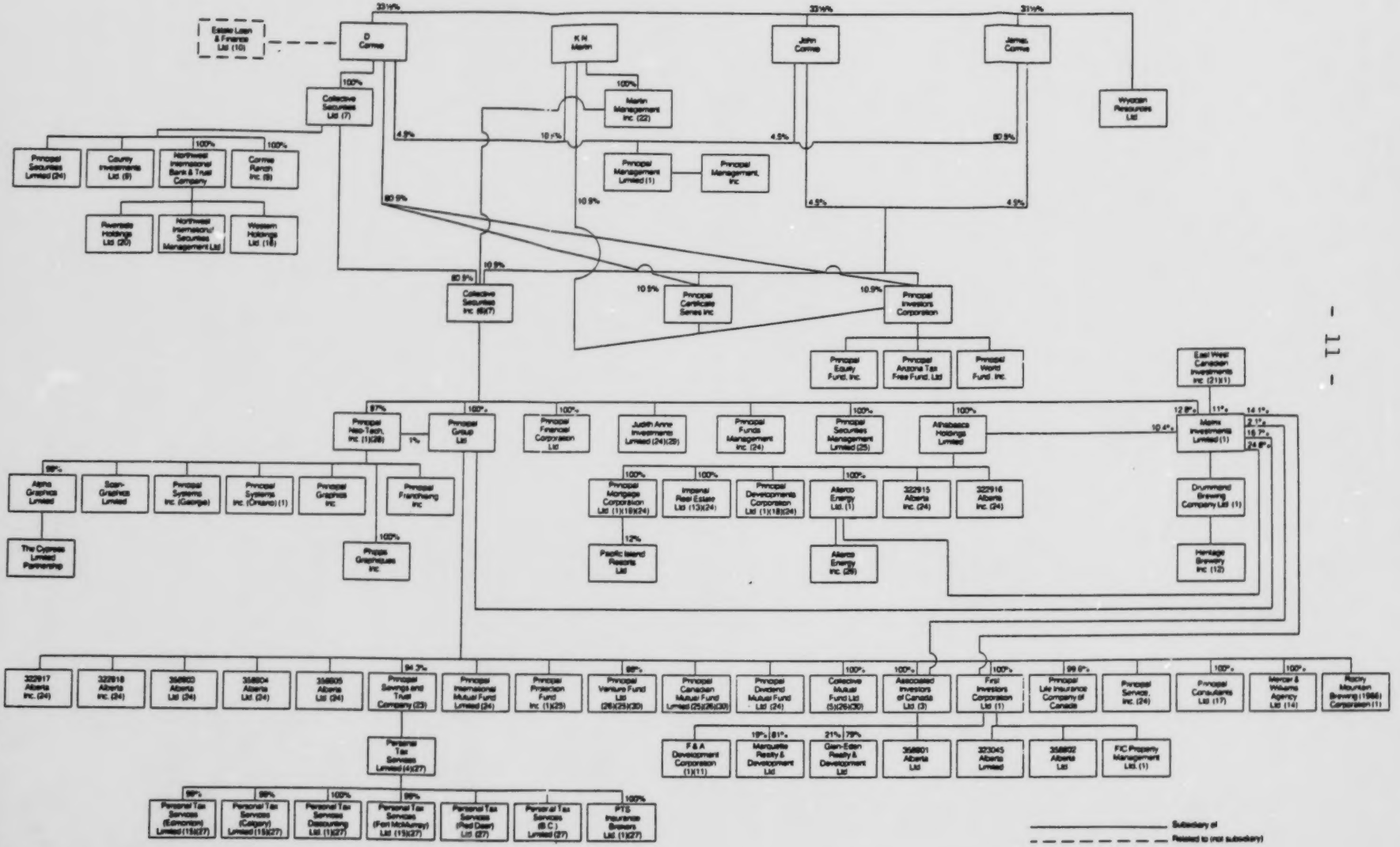
Insurance under the Investment Contract Act of Newfoundland and concluded that any legal liability and obligation to compensate investors should be established by the Courts. In December, 1989 he advised the Victims of Principal organization that he was not prepared to recommend that the Government contribute to compensation of those who were affected by the failure of First Investors Corporation.

The Principal Group - Background

The Principal Group of Companies was a maze of over a dozen interconnected companies including Principal Savings and Trust, Principal Consultants Ltd., Associated Investors Corporation, First Investors Corporation, mutual fund companies, management companies, mortgage securities, tax services, management services, and others. The Principal Group was wholly owned by Collective Securities Inc. in which an 80 per cent interest was held by the founder, Donald M. Cormie, 10 per cent by Kenneth N. Marlin, and the remainder by members of the Cormie family.

The two companies which issued investment contracts, First Investors Corporation and Associated Investors Corporation, were the cornerstones of the Principal Group and a major

THE PRINCIPAL GROUP
CORPORATE CHART
AS AT JUNE 30, 1987



source of revenue for other enterprises. FIC and AIC offered clients slightly higher rates of interest (one-quarter to one-half of one per cent) than were available at banks. These investment contracts were not insured by Canada Deposit Insurance Corporation (CDIC), an organization under federal authority which provided insurance against loss of deposits made with members. Membership in CDIC was limited to banks, trust companies, and loan companies. Neither FIC nor AIC were members of CDIC. Instead, the companies were required, under the Investment Contract Act of Alberta, to maintain assets on deposit sufficient to meet their obligations to contract holders.

FIC and AIC invested heavily in property when Alberta real estate values were exceptionally high. When prices fell they were burdened with bad mortgages and foreclosures. By 1984 the market value of the mortgages were much less than the value being carried on the books (the original purchase price) and two-thirds were in arrears. Principal salesmen were instructed to assure clients that their investments were fully covered at a time when the companies were, in fact, insolvent.

In 1984 it was clear to regulators in Alberta that FIC and AIC were not in compliance with the Investment Contract Act, and that they did not have the reserves required by law if they were to meet their obligations to investors. The Deputy Minister of Consumer Affairs (the Department responsible for regulation of securities) recommended that they be closed down. The Minister declined to follow this advice. In 1986 responsibility for securities regulation in Alberta passed to the Treasury which conducted an external audit. The licences of FIC and AIC were withdrawn on June 30, 1987, and six weeks later most of the Principal Group of companies were in bankruptcy.

At the time of the collapse of the Principal Group there were 67,000 individuals with a total of over $490 million in FIC and AIC investment contracts. These included nearly 6000 Nova Scotians who held a total of over $27 million in FIC certificates. Nova Scotians represent the largest single group of contract holders outside Alberta, British Columbia, and Saskatchewan.

The Principal Group - Sales Practices

The marketing techniques and sales practices of the Principal Group have been thoroughly

investigated in other provinces and fully documented in several reports, most particularly in the Code Report and the Robinson Report.

The financial products offered by the Principal Group included FIC and AIC certificates, mutual funds, PS&T term deposits, and promissory notes issued by Principal Group Ltd. All of these products were sold by salesmen (described as "financial consultants") employed by PCL through one-stop "Principal Financial Centers".

The Principal Financial Centers prominently displayed the name of Principal Savings and Trust and decals of CDIC both outside and inside the premises. There was no clear demarcation between the areas used by the different companies, nor was there any public identification which would indicate whether staff worked for PS&T, PCL, FIC or AIC. The lack of clear demarcation and identification caused investors to be confused, misled, or deceived about the identity of companies with which they were dealing.

FIC and AIC issued investment contracts but did not have their own sales staff. They relied, instead, on the employees of PCL to sell their products. These salesmen received a higher commission for selling contracts of FIC and AIC

(which were not insured by CDIC) than for selling term certificates of PS&T (which were so insured).

In a typical case, a prospective client would walk into a Principal Financial Center and ask the teller at the trust counter about a PS&T term certificate that he had seen advertised. The teller would refer him to a "financial consultant" who was an employee of PCL, but was not identified as such. The prospective purchaser would be given a presentation on mutual funds and investment contracts. He would be assured that the latter were "secure", "safe", "better than CDIC", because they were guaranteed by funds on deposit in a Canadian chartered bank as required by Alberta law. The client might then decide to purchase an FIC or AIC investment contract rather than a PS&T term certificate. If he did so, he would be asked to make out his cheque to "Principal", or "Principal Plans", or "Principal Savings and Trust". In due course he would receive a statement of account which would specify that he held FIC or AIC investment certificates, but even then these were listed under the general heading of "Principal Group of Companies".

The Code Inquiry, having analyzed these practises in detail, came to the following conclusion:

> "... the existence of PFCs [Principal Financial Centers] in combination with the practice of PS&T employees referring prospects to PCL salesmen confused at least some investors as to what product they had purchased and who they had contracted with... the evidence tends to show that the counselling practices of the Group came close to and in some cases amounted to "bait and switch" tactics. The effect of the Group's practices was to blur distinctions between the companies in the Group, their products and their features, with the result that some purchasers did not know which company they had contracted with or the nature of the product they had purchased". (Code Report, p. 76-77).

According to the internal records of the Principal Group ("Customer Analysis"), the typical Principal client in 1984 was a person of comparatively modest means. Forty-one per cent reported earnings of less than $25,000 per year and only twelve per cent made more than $50,000 per year. The average age was 51 years. Those in the 55-plus age bracket held more than half the total amount of money invested in Principal products. Further analysis reveals that nearly half the clients were unaware that their FIC and AIC contracts were not insured by CDIC.

Investors in FIC and AIC contracts have been described as "speculators". This description is inaccurate and unfair. In response to the suggestion made at the Code Inquiry that those who bought investment contracts were savers and "didn't play the horses or mutual funds", the President of FIC replied: "Yes, they were savers. They were people who had not been involved in investments that had equity base or there was a risk in". Mr. Code came to the same conclusion:

> "The evidence of those who testified at the hearings tends to show that while they were not adverse to a good rate of return, their first priority was a safe, secure investment. They were savers, not speculators... investors were particularly anxious to put their money into safe and secure investments after the deterioration of the early 1980's and the problems encountered by some financial institutions" (Code Report, p. 49-50).

There is no reason to believe that Nova Scotians who bought investment contracts were any different from purchasers elsewhere. Interviews with investors in this Province confirms the impression that, in terms of age, income, and concern for secure investments, they correspond to the national profile as presented in the Code Report.

The evidence presented by Nova Scotians who testified under oath before the Code Inquiry, confirms that the deceptive and misleading sales techniques which prevailed in other provinces were routinely practiced in this Province also.

Investment Contracts

An "investment contract" has been defined as a contract, agreement, certificate, instrument or writing between a purchaser and a seller specifying that, in exchange for a lump sum or series of instalment payments, the seller will pay to the purchaser, on a date set out in the contract, a fixed amount of money which may or may not include interest.

Such contracts traditionally contain provision for a fixed amount of interest, usually at a low rate (four per cent in the case of FIC and AIC) and provision for additional interest to be paid at the discretion of the seller and declared by the seller during the life of the contract. In the case of FIC and AIC these "additional credits", if any, were declared on a quarterly basis.

An investment contract was also to include what was called "optional settlement value", i.e., a provision allowing part of its value to be redeemed or converted into another form of

investment, usually an annuity, as an alternative to holding the contract to maturity.

The funds paid to the seller of a contract were to be invested according to rules generally applying to insurance and trust companies, that is to say, in "safe" investments. The purchaser of an investment contract, unlike a mutual fund, did not own any part of the investment made by the seller. The seller owed the buyer a specific amount of money, regardless of the success the seller had had in investing the buyer's money during the life of the contract.

Contracts were of two types: (1) the accumulation plan requiring the purchaser to make regular payments during the life of the contract, and (2) the single pay plan requiring the purchaser to make a single lump payment at the time of purchase.

Two types of the single pay contract were offered by FIC and AIC: (1) those issued for terms of less than one year and having a stated rate of return, and (2) those issued for terms of one to ten years and having a single fixed or guaranteed rate of 4 per cent plus additional credits. Those with the additional credit feature, because there was no certainty or guarantee of the additional credit, could not be advertised. This explains the

practice of locating salesmen of FIC products on the same premises as PS&T operations in order that PS&T tellers could refer clients to salesmen of these products which had not been publicly advertised.

Initially FIC and AIC concentrated on the selling of accumulation contracts as a form of "forced saving" by small purchasers, but more and more of their sales effort was devoted to single pay plans. By 1987, when FIC and AIC ceased to operate, about 95 per cent of their outstanding contracts were single pay.

FIC and AIC had clearly become deposit taking companies offering a product which was virtually indistinguishable, at least in the public mind, from term deposits offered by banks and from guaranteed investment certificates offered by trust companies. They were operating without the statutory safeguards required of banks and trust companies, and at the same time they were not in full compliance with the requirements of the Investment Contract Act of Alberta.

Recognition of the fact that investment contracts were similar to both investments and term deposits, but in essential respects unlike either, prompted governments in some provinces to introduce legislation specifically designed to regulate the industry.

In Alberta, the Investment Contract Act came into force in 1957, followed by almost identical legislation in British Columbia (1962) and Saskatchewan (1965).

These Acts were all designed primarily to provide buyer protection, although they did not offer nearly the security provided in the regulations governing major financial institutions such as banks and trust companies.

The major provisions of the Investment Contract Act related to capital reserves and deposits. An issuer of investment contracts was required to have minimum unimpaired capital, to have on deposit in a Canadian chartered bank or trust company qualified assets equal to the amount that the company was liable to pay out to contract holders at a particular time, and to maintain reserves equal to the face value of contracts when they would come due. The issuer was also required to submit quarterly statements and file an audited annual financial statement.

It is important to note that the financial and other information required to be submitted by the issuer for registration under the Act was solely for the use of regulators, and was neither intended for nor available to the public.

A Federal-Provincial joint study of the investment contract industry in 1969 concluded that a company which issued single payment contracts exclusively ought not to be treated as an investment company but, instead, should be regulated as a trust company or some other type of financial institution because single pay contracts were not the type of financial product that investment contract legislation was designed to control. The participation of all the provinces in this study reflected the concern expressed by security administrators throughout the country in regard to investment contracts.

Investment Contracts in Nova Scotia

There was no legislation in Nova Scotia comparable to the Investment Contract Act of Alberta. It is obvious that the Legislature in this Province declined to follow the example of Alberta and chose not to enact legislation which would exclude the investment contract business from traditional securities legislation and bring it under an Act dealing specifically with investment contracts.

In Nova Scotia the sale of investment contracts continued to come under prevailing securities legislation, and companies which issued investment contracts for sale in this Province were expected to operate under the requirements of the

Securities Act RSNS 1967 c.280 and Regulations pursuant to the Act. This is consistent with the generally accepted principle that in provinces where there is no regulation of investment contract issuers, the investment contracts are subject to securities regulation in the same way as any other issuer of securities.*

Securities Legislation in Nova Scotia

The legislative enactments in Nova Scotia respecting the sale of securities demonstrate a history of successive efforts to offer a measure of protection to investors in the Province in keeping with changes over the years in the industry.

While not the earliest statute, the Act which was proclaimed on August 1, 1930, "The Securities Frauds Protection Act", provided for the registration of brokers and salesmen, and for investigation and action by the Attorney General in specified circumstances.

An amendment to that Act in 1936, provided for the registration of securities, including the filing of a "Registration Statement" containing information respecting the security and the issuer, and prohibiting trading in a security by a

* See Appendix G.

person registered under the Act unless and until a registration statement was filed with the Registrar under the Securities Act and was in effect.

Section 9B of the amending Act of 1936 contained the provision: "The information contained in or filed with any registration statement shall be made available to the public..." Such a provision appears in each successive Act and was in effect until RSNS 1967 c.280 was repealed in October, 1987.

Clearly the intention was to ensure that before any trading in a security took place in Nova Scotia, a member of the investing public could examine a public record of certain material relevant to that security and in this way would be assisted in making a decision on investing in it. Certain securities were exempted from the requirement to be registered.

Regulations under the authority of the 1930 Act were made by the Governor in Council in 1942, and remained in effect until replaced by new regulations in 1987. The 1942 regulations provided that "investment contract" was included in the definition of "security" in the Securities Act. In 1969 an amendment was made to the

legislation whereby the definition of "security" was further expanded. The reference to "investment contract" as a security was not deleted at that time. No definition of investment contract was offered in either the statutes or the regulations.

While it is doubtful that single pay certificates conformed to the definition of "investment contract" in the Investment Contract Act of Alberta, it is clear that the certificates sold in Nova Scotia would, as a document commonly known as a "security", qualify as a "security" within the definition section of the Securities Act of this Province.

Since 1936 the major thrust of securities legislation in Nova Scotia for the protection of the public has been the requirement for the registration of securities as specified in Part IV, Section 22, of the 1942 regulations. This Section sets out in 52 clauses the information required before a securities registration certificate may be issued by the Registrar.*

Most of the items of information required under Section 22 relate to the security issuer, rather than the security itself, and include: particulars

* See Appendix A.

of the security issuer's principal business office; general character of the business transacted by the issuer; names and addresses of directors; number of shares issued to directors; frequency and nature of reports to shareholders; a statement of capitalization; a statement of each class of capital stock outstanding; a statement of all pending litigation which might affect the value of the security being issued; full particulars of any denial of the right to sell securities by any regulatory body in any Province; the amount and particulars of funded debt outstanding; the name and addresses of underwriters of the issuer; the price at which the security will be sold; particulars of any property purchased or acquired by the company; the number and amount and conditions attached to securities issued in the preceding two years; a complete list of all subsidiaries of the issuer; an audited balance sheet for the preceding ninety days; a profit and loss statement for the preceeding two years; a copy of the last annual report to shareholders; copies of all reports made by any expert in respect to property acquired by the company; and, a copy of the prospectus to be issued to the public.

The last of the requirements was specified in paragraph 52 of Section 22:

(52) "Copies of any other documents, reports, or any other information which the Registrar may from time to time require, having due regard to the public interest and the protection of investors." [emphasis added]

The Registrar was empowered by the regulations to issue an order granting exemptions from any of the 52 clauses, a power of discretion which specified in paragraph 24 of the regulations:

(24) "The Registrar may accept copies of the information filed by the security issuer with any province of Canada or the Secretary of State for Canada or any state or federal regulatory body of the United States of America to qualify the securities for public offering in lieu of the information required in the registration statement as set forth in these regulations."

It should be noted that the Registrar was authorized to accept copies of the information filed by the security issuer to qualify the securities for public offering in another province.

This was the extent of the Registrar's discretionary power under the Securities Act of 1967 and regulations.

The financial and other information required to be submitted by the issuer of a security for registration under the Securities Act in Nova Scotia was extensive and similar in many respects to the information required to be submitted by the issuer of an investment contract under the Investment Contract Act in Alberta.

Although the information required to be submitted under both Acts was much the same in terms of type and detail, there was an important difference. In Alberta the information submitted was intended solely for the use of the regulators in order that the regulators could ensure that the issuer was meeting the standards set by statute. The information was not available to the public. In Nova Scotia, by contrast, the information received and recorded by regulators under the Securities Act was intended primarily for prospective investors and was available for examination by the public. In other words, the Government of Alberta placed itself between the issuer and the public, whereas in Nova Scotia, the Government did not purport to place itself between the issuer and the public.

Administration of Securities Legislation - N. S.

It is clear that the plan embodied in legislation in Nova Scotia was to ensure that members of the

public should be able to obtain information about a company or about the securities issued by a company from a public office.

Information about a company doing business in Nova Scotia (the name and address of its registered agent in Nova Scotia, the names and addresses of its directors) was to be available in the office of the Registrar of Joint Stock Companies where such companies were required to be registered.

Information about securities, brokers and salesmen of securities was to be available in the office of the Registrar appointed under the Securities Act. Information on record in this office was to enable a person to determine whether or not an individual was a registered salesman or not. Information about a security and the company issuing it was to help a potential investor decide whether or not to invest in a security offered by a particular company.

Both of these functions, the registration of companies and the registration of securities, were performed on the same premises.

At various times the position of the Registrar of Joint Stock Companies and the Registrar under the Securities Act have been held by the same individual.

In a normal year the office of Registrar under the Securities Act registered approximately 75 brokers, 500 salesmen, and 500 security issues. These applications and registrations were processed by a staff consisting of one person and a part-time clerk.

Until 1987, the routine operation of the office of Registrar under the Securities Act was the responsibility of a Deputy Registrar working under the general, but sometimes not very active, direction of the Registrar. The Deputy Registrar was assisted by the part-time clerk and on occasion, by the office supervisor who was otherwise fully engaged in duties associated with the office of Registrar of Joint Stock Companies and its staff of fifteen. The person who was acting as Deputy Registrar (Securities) in the early 1980s lacked formal professional training related to finance but did acquire a working knowledge over time and performed remarkably well under difficult circumstances.

Obviously, there was an urgent need for more staff and greater professional expertise in the office of the Registrar (Securities). Requests for additional staff were repeated each year. These efforts were only modestly successful when the part-time clerk was upgraded to the status of full-time. A modest increase in staff need not

have resulted in any significant burden on the provincial budget. Securities regulation produced revenue through registration fees: the net surplus revenue alone should have been sufficient to support the addition of at least one professionally qualified person.*

It should be obvious that securities regulation ought to be self-funding, and that users should pay the cost of operating the system through payment of fees. By the same token, the government should directly dedicate to securities regulation all the fee revenue which is generated. Otherwise, the system simply becomes another means of raising general revenues. During the current fiscal year the Nova Scotia Securities Commission expects to generate surplus revenue after deduction of expenses in the amount of approximately a half million dollars. Presumably, this surplus will become a credit to the general revenue account of the Province. By contrast, in some provinces, not only is all fee revenue applied directly to securities regulation, it is supplemented by additional funds from general provincial revenue.**

First Investors Corporation Ltd. was registered in Nova Scotia under the Securities Act as a broker

* This refers to securities regulation revenue only. It is of some interest to note that the Registry of Joint Stock Companies, separately responsible for the registration of companies but sharing the same premises, was generating net surplus revenue after the deduction of expenses in the amount of approximately $1 million annually for a total of more than $10 million in the period 1978-1987.

** See Appendix G., p.142

in 1960 but this registration was later cancelled and from 1973 onward, investment contracts issued by FIC were sold by Principal Consultants Limited. FIC also applied for registration of its investment contracts with the Registrar under the Securities Act and certificates of registration were issued each year on the basis of the payment of fees, the filing of a copy of the investment contract and a copy of the certificate of registration issued by the regulator in Alberta under the Investment Contract Act of that Province. On June 4, 1987 a notice from the office of the Registrar was issued stating that satisfactory information had been received and that registration of the investment contract issued by FIC was granted. Three weeks later, on June 30, 1987, FIC ceased to do business in Alberta. On July 29, 1987, the Attorney General of Nova Scotia ordered trading in the securities of FIC to cease in this Province.

In Nova Scotia, the Registrar appears to have accepted that the statutory requirements respecting registration of securities were satisfied in so far as the investment contracts of FIC were concerned, by the filing of a copy of the form of an investment contract and by written confirmation that FIC had been registered as an issuer in Alberta.

The Investment Contract Act of Alberta besides requiring that a copy of each form of investment contract be filed with the Superintendent, also

required that the issuer of an investment contract file very detailed financial and other information, including quarterly and monthly financial statements, and not later than ninety days after the expiration of its fiscal year, a balance sheet and profit and loss statement for the fiscal year. No indication appears in the Registrar's file in Nova Scotia that such financial statements, or copies of them, were ever filed by FIC in this Province.

No registration statement was ever filed with the Registrar in Nova Scotia to qualify the investment contracts issued by FIC for public offering in this Province.

It would appear that the Registrar, by accepting a copy of the form of investment contract and confirmation that FIC had been registered as an issuer in Alberta, exercised the discretion given under Section 24 of the regulations.

If the Registrar in adopting this practice, was relying upon the discretion granted by Section 24 of the Regulations, then he should have required the filing of copies of the financial statements and other information required under the Investment Contract Act of Alberta. This information would then have required to be made available to public inspection in Nova Scotia under the Securities Act RSNS 1967 c.280 Section 16(4).

This did not happen and the investment contracts of FIC were approved by the Registrar without requiring that FIC file the minimum information provided for in the statute. With hindsight it is easy to say that this practice was not in keeping with the admonition in the Securities Act to have "due regard to the public interest and the protection of investors" and fell short of providing the prescribed measure of protection for investors in Nova Scotia.

It is probable that if the Registrar had insisted on submission of financial statements, FIC would not have complied for the simple reason that this information would then have been open to public inspection. If the company did not comply, then FIC investment contracts would not have been sold in this Province.

Theory of the Primary Regulator

In accepting written confirmation that FIC had been registered as an issuer of investment contracts in Alberta, the Registrar in Nova Scotia appears to have placed reliance on the notion or theory of the primary regulator.

This theory postulates that the Province which a security issuer selects as principal jurisdiction will have primary responsibility in determining whether a security is cleared for issue. In securities regulations, the theory provides a

practical response to the duplication of effort in the regulation of securities issues in more than one province.

Instead of each province repeating the investigative and administrative procedures of the primary jurisdiction, the regulators in other provinces rely on the regulator in the province of primary jurisdiction to review the material filed with an application and take the lead in preparing comments as to its acceptability.

The arrangement is one result of the efforts of securities administrators in each province to co-operate in making the process of security registration more efficient and less costly. Agreements for such co-operation are normally embodied in what are known as "National Statements" issued by a committee of securities regulators ("Canadian Securities Administrators").

National Policy No. 1 deals with the "Clearance of National Issues" and sets out in detail the procedures to be followed in the primary jurisdiction selected by the issuer and the part to be played by the secondary jurisdiction. It provided for the filing with the securities administration in each of the secondary jurisdictions in which it is proposed to qualify the issuer, copies of the information already filed with administrators in the primary jurisdiction.*

* See Appendix B.

This administrative practice was designed to serve the convenience of the investment community and it did not relieve administrators in secondary jurisdictions of their responsibility to ensure that the requirements of securities legislation in their own jurisdictions were met. This understanding is clearly and specifically stated in National Policy No. 1.:

"1.(m) The procedure adopted by this Policy is for the convenience of the investment community. It involves no surrender of jurisdiction by any regulatory authority. Each of the administrators will retain in its entirety the statutory discretion vested in such administration to review, accept or reject a particular prospectus or AIF [annual information form]."

It is clear that in following the procedures contemplated by National Policy No. 1 where the security is of a traditional nature, the Registrar would be exercising the discretion conferred upon him by Section 24 of the Regulations, i.e., to accept copies of the information filed by the issuer in the primary jurisdiction to qualify the security for public offering in lieu of the information required in the registration statement under Section 22.

However, where the issue is deemed not to be a security in the primary jurisdiction, as was the case with FIC investment contracts under the legislation of Alberta, then the reliance upon the procedure described in National Policy No. 1 was inappropriate and an improper exercise of the Registrar's discretion.

The choice for the Registrar in Nova Scotia was clear: either to require the filing of a registration statement as detailed in the Regulations under Section 22 or to obtain copies of the information required to be filed in Alberta and make it available to the public in Nova Scotia under Section 24 of the Regulations.

In the absence of this information the investment contracts ought not to have been registered as a security for sale in this Province.

Responsibility for the Situation in Nova Scotia

The type of security represented by investment contracts did not fit readily, if at all, within the regulatory framework provided by securities legislation in Nova Scotia. However, the failure to protect the public in Nova Scotia lies not in the absence of new securities legislation relating to investment contracts. Rather, it lies in the

failure to properly administer securities legislation which had been law in this Province for many years.

To suggest that the problems of the investors in Nova Scotia who purchased FIC investment contracts had their origin solely in the wrongful exercise of discretion by the Registrar under the Securities Act is simplistic. It would not seem fair that regulators should bear the full burden of responsibility for whatever deficiencies may have existed in the securities regulatory system in Nova Scotia.

The ultimate responsibility for the situation which permitted residents of Nova Scotia to purchase FIC investment certificates must lie with the Government of the Province and in the failure of successive governments to provide the Registrar with adequate resources to properly administer the Securities Act. Having devised and enacted a plan for the protection of the public, the government failed to ensure that the office of Registrar had the number and quality of staff who would have recognized that the Act was unsuitable for the registration of investment contracts; who would have been aware of the widespread concern about investment contracts among security administrators exemplified in 1969 by the report of a

federal-provincial study of the matter (Report of the Canadian Committee on Mutual Funds and Investment Contracts); who would have been aware of the reasons for the enactment of legislation in several provinces dealing specifically with investment contracts; who would have informed themselves of the particular requirements contained in the Investment Contract Act of Alberta; and, who would have appreciated the essential differences between requirements in Alberta and requirements embodied in traditional securities legislation such as prevailed in Nova Scotia.

The allocation of scarce resources is a difficult and persistent problem for any government, but when an administration legislates to itself statutory responsibility, then it must ensure that regulators who act on its behalf in fulfilling that responsibility are provided with adequate resources. Successive administrations in Nova Scotia from 1959 to 1987 failed to do so, and as a result the office of the Registrar lacked the resources and expertise to properly administer the plan for investor protection embodied in the statute.

The government purported to regulate but did not do so. To purport to regulate and not to regulate is probably worse than not purporting to regulate at all.*

* See Appendix G., p.138

Conclusions

1. Almost six thousand residents of Nova Scotia purchased investment contracts offered by First Investors Corporation Ltd. They represent the largest single group outside Alberta, British Columbia, and Saskatchewan and were not dissimilar to purchasers of contracts in other provinces in terms of age, income levels and personal financial objectives.

2. Investigations in other provinces have confirmed beyond doubt that the sales practices of First Investors Corporation Ltd. and associated companies were deceptive and misleading. These same techniques were routinely practiced in Nova Scotia.

3. First Investors Corporation Ltd. by the 1980s had become in effect a deposit taking company offering a product which was virtually indistinquishable, at least in the public mind, from term deposits and guaranteed investment certificates offered by banks and trust companies but without the statutory safeguards required of banks and trust companies.

4. Investment contracts were deemed in several other provinces not to be a security in the traditional sense and new legislation was enacted in those provinces to bring such contracts within the regulations of Investment Contract Acts. Investment contracts continued to be deemed a security in Nova Scotia and their issue and sale continued to be subject to the regulation of the existing Securities Act of this Province.

5. The Government of Nova Scotia deserves credit for recognizing deficiencies inherent in the existing securities regulatory system and for enacting the present Securities Act, establishing a Securities Commission, and providing the bureaucracy to administer it. Under the present regime it is most unlikely that the unhappy experience of the Principal affair could be repeated.

6. The office of the Registrar under the Securities Act registered investment contracts of First Investors Corporation Ltd. contrary to the provisions of the existing statute and regulations relating to the registration of securities.

7. The Registrar appears to have accepted as satisfactory compliance with the statute and regulations respecting registration of securities, the filing of a copy of an investment contract filed with the Superintendent in Alberta, and confirmation that the issuer had been registered as an issuer in Alberta. That this action was an improper exercise of discretion can hardly be doubted. Such discretion must be exercised in a manner consistent with the purposes and objectives of the empowering legislation. A prime purpose and object of the Securities Act was the protection of the investing public. That such protection was not absolute, nor intended to be, is obvious but it did extend to the provision for examination by the public of a basic minimum of pertinent information relevant to the making of an investment decision. At this point, it appears that there was a failure on the part of the officials concerned, and, indeed a failure of the system itself, to provide in Nova Scotia the minimum protection prescribed by legislation.

8. The Office of the Registrar in Nova Scotia relied improperly on regulators under the Investment Contract Act of Alberta. Such reliance was an improper exercise of the Registrar's discretion under the securities legislation and regulation of this Province.

9. The notion that there was a national policy of reliance on the primary jurisdiction, that officials in other provinces could rely and were entitled to rely on regulators in the primary jurisdiction to regulate a company, was a practice adopted by securities administrators for the convenience of the investment community. It was an informal arrangement and had no statutory basis in any Province.

10. The priority and obligation given to the notion of "principal jurisdiction" in National Policy No. 1 resulted in a reliance on the regulators in the Province of Alberta which was not based on any legislation in the Province. It must be assumed that the practice was known to and accepted by responsible officials of the Government of Nova Scotia.

11. If the Registrar in Nova Scotia had insisted on the submission of financial information by FIC, it is likely that the company would not have complied. In that case, FIC would not have been registered in this Province and its investment contracts would not have been sold here. If, on the other hand, the company did comply, then the information would have been

open to public inspection in Nova Scotia as required by statute and an accountant with a knowledge of the Investment Contract Act on reviewing the financial statements would have become suspicious, perceived that the company was in financial difficulty, and concluded that it was probably not able to meet statutory obligations to contract holders.

12. Successive governments in Nova Scotia between 1959 and 1987 failed to make available to the office of the Registrar the personnel resources and expertise required for the proper administration of the plan for investor protection embodied in the securities legislation of this Province.

13. This decision to withhold adequate support was made despite repeated pleas for additional personnel from the office of the Registrar and despite ample warnings that existing securities legislation in Nova Scotia was unsuitable for the registration of investment contracts, warnings which had been exemplified by reasons given for the enactment of specific legislation such as the Investment Contract Acts of other provinces, and by the conclusions drawn in a major federal-provincial report on mutual funds and investment contracts released in 1969.

14. The Government of Nova Scotia bears a moral and legal responsibility for a portion of the loss suffered by residents of this Province who purchased in Nova Scotia investment contracts issued by First Investors Corporation Ltd.

15. The Securities Act of Nova Scotia was clearly unsuitable for the registration of investment contracts and thus the responsibility for loss which may be attributed to regulators in this Province is less than would be the case where specific legislation existed as in the form of the Investment Contract Acts of Alberta, British Columbia, and Saskatchewan.

Recommendations

1. That the Government of Nova Scotia compensate holders of FIC investment contracts issued in Nova Scotia in an amount which, together with compensation already offered by the Province of Alberta and the share of proceeds from the sale of assets, is not less than the compensation to be received by holders of contracts issued in the Province of Alberta.

2. That the Government of Nova Scotia endeavour to persuade the Government of Alberta that Nova Scotia be exempt from any pooling arrangement in view of the fact that there did not exist in this Province any legislation relating exclusively to investment contracts such as existed in the form of the Investment Contract Acts of Alberta, British Columbia, and Saskatchewan.

APPENDIX A.

SECURITIES ACT RSNS 1967 c.280, REGULATIONS, s.22, s.24

DEPARTMENT OF THE ATTORNEY GENERAL

The Securities Act

Regulations made under the authority of Chapter 3 of the Acts of 1930, The Securities Act, by the Governor in Council the 10th day of March, A. D., 1942.

(Tabled the 10th day of March, A. D., 1942)

PART I

Definitions

1. The interpretation provisions of the Act, as extended or amended from time to time by regulation, shall apply to these regulations.

2. "Act" shall mean The Securities Act.

3. "Non-brokerage" means that the Attorney General has attached to a registration of a broker a term, condition or restriction that the said broker is authorized to trade in securities of its own issue and not to trade generally with the public in other securities.

4. "Official" wherever used in these regulations shall include the president, vice-president, secretary, treasurer, general manager, department and branch office managers, and all other persons acting in a similar capacity whether so designated or not.

5. "Security" in addition to the definition contained in clause (h) of section 2 of the Act shall, without in any way restricting the generality of such definition, include any bond, debenture, share, stock, note, unit, unit certificate, any participation certificate, certificate of share or interest, preorganization certificate or subscription, certificate of share or interest in a trust estate or association, profit-sharing agreement or certificate, certificate of interest in an oil, gas or mining lease, claim or royalty, voting trust certificate, collateral trust certificate, income or annuity contract not issued by an insurance company, bankers' share, trustees' share, investment contract, investment participating bond, or investment trust debenture, bond, debenture, share, stock note, unit or certificate bond upon any security whether any of the foregoing relate to a person, proposed company or company as the case may be, agreements of sale and purchase of real property. or any interest therein upon any instalment plan where the execution of such agreements by any of the public is sought by means of what is known as "the lunch and lecture system," agreements of sale or purchase upon instalments or otherwise, agreements to purchase any fur-bearing animal which is not to be appropriated to the contract or

cannot be identified as so appropriated, memberships in any organization, league or association, whether incorporated or not, which has for its object the rendering of special protective service or service to motorists or other special service and any contract or agreement to give advice or information concerning investments.

6. "Trade" or "Trading" in addition to the definition contained in clause (j) of Section 2 of the Act, shall without in any way restricting the generality of such definition, include participation as a floor trader in any transaction in a security upon the floor of any stock exchange, and also any receipt by a broker or salesman of an order to buy or sell a security, whether the order is received over the telephone or in person and whether the recipient receives such order as a broker or salesman or on behalf of a broker.

. . . .

Registration of Securities

20. Every request for the registration of securities shall be made on the forms prescribed from time to time by the Registrar, and shall be accompanied by a certified cheque, money order or postal note made payable to the Provincial Treasurer of Nova Scotia for the prescribed fee.

21. A register shall be kept in which shall be entered the name of the security issuer, details of the proposed issue for which registration is being applied for, the name and address of the agent for service of the security issuer, and other matters.

22. The registration statement, other than a registration statement for the security of a foreign Government or sub-division thereof, shall contain the following information unless an order is issued signed by the Registrar granting exemption from any of the clauses hereinafter set down:-

(1) The name under which the security issuer is doing or intends to do business.

(2) The location of the security issuer's principal business office.

(3) The date of incorporation or organization of the security issuer and the law or authority under which the security issuer is incorporated or organized.

(4) The territories where the security issuer is licensed to carry on business.

(5) The name of the registry or transfer agency for the security issuer in the Province of Nova Scotia.

(6) The general character of the business transacted or to be transacted by the security issuer.

(7) The period of time the security issuer has been engaged in business and if the security issuer has taken over another company, the period of time the predecessor of the security issuer was engaged in such business.

(8) The address at which the annual meetings of the security issuer are held, or are to be held.

(9) The name and address of the agent of the security issuer, service upon whom of any writ, summmons, process, order, notice or other document shall be deemed to be a sufficient service upon the security issuer.

(10) If the security issuer is an incorporated company, the names and addresses of the directors or persons performing similar functions and the chief executive, financial and accounting officers chosen or to be chosen; if the security issuer is a partnership, the names and addresses of the partners; and in the case of a business to be formed or formed within two years prior to the filing of a registration statement, the names and addresses of the promoters.

(11) The number of shares of the security issuer held by, or to be issued to, any person mentioned in the next preceding paragraph as of a date not more than twenty days prior to the filing of the registration statement.

(12) The frequency, nature and scope of reports to shareholders of the security issuer.

(13) The name and address of the auditor of the security issuer.

(14) A statement of the capitalization of the security issuer including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares into which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights; rights to dividends, profits or capital of each class, with respect to each other class, including the retirement and liquidation rights thereof.

(15) A statement for each class of capital stock outstanding for a period of three years prior to the filing of the registration statement, giving the nominal dividend rate on each class of shares, the rates of dividends paid per share, the method of

payment, whether in cash, capital stock or otherwise; and if any dividends were paid in stock, the amount per share charged to surplus, and the class of surplus from which such dividends were paid, together with the unpaid cumulative dividends on each class of stock outstanding.

(16) A statement of all pending litigation that may materially affect the value of the security for which registration is sought, describing briefly the origin and nature of the litigation and the names of all parties thereto.

(17) Full particulars of each and every denial of the right to sell the securities of the security issuer by any Provincial or Dominion regulatory body or by any State or Federal regulatory body of the United States of America.

(18) The amount of the funded debt outstanding and the debt to be created by the security to be offered, with a brief description of the date of maturity and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted; if substitution is permissible without notice, a specific statement to that effect.

(19) Particulars of the securities, if any, covered by options outstanding or proposed to be given and the price or prices at which, and the date or dates by which, such options must be exercised.

(20) The names and addresses of all persons, owning of record, or beneficially if known, more than ten per centum of any class of voting stock of the security issuer as of a date not more than sixty days prior to the filing of the statement. If no person owns more than ten per centum of such stock of the security issuer, then the names and addresses of the ten largest stockholders of record, or beneficially if known.

(21) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof.

(22) The names and addresses of the underwriters of the issue for which registration is sought, together with (stated separately) the name of any such underwriter that is controlled by or controls, or is under common control with the security issuer.

(23) The price at which it is proposed that the security for which registration is sought shall be offered to the public, or the method by which such price is to be computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or class of persons other than the underwriters, naming them or specifying the class.

(24) All commissions or discounts paid or to be paid, directly or indirectly, by the security issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts or anything else of value, paid, to be set aside or disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security. A commission paid, or to be paid in connection with the sale of such security, by a person in which the security issuer has an interest or which is controlled or directed by, or under common control with, the security issuer, shall be deemed to have been paid by the security issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated.

(25) If the security issuer has not been carrying on business for more than one year, prior to the filing of the registration statement, the amount or estimated amount of preliminary expenses must be stated.

(26) A statement showing the number and amount of securities which, within the two preceding years, have been issued or agreed to be issued as fully or partly paid up, setting forth in the case of stocks the actual dividend rate, the number of shares sold, the total par value thereof, (or if the shares have no par value, the stated or assigned value thereof,) the price per share to the public, the net proceeds realized from the issue and the names of the principal underwriters. In the case of bonds or debenture, the annual interest rate, the price to the public, the net proceeds realized from the issue, and the names of the principal underwriters with a description of the nature of the bond or other similar security.

(27) The amount paid within the two preceding years or the amount intended to be paid to any promoter with his name and address and the consideration for such payment.

(28) Particulars of any property purchased or acquired by the company, or proposed to be purchased or acquired, the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue or has been paid within the last two preceding years, or is to be paid in whole or in part in securities of the company, or

the purchase or acquisition of which has not been completed at the date of filing of the registration statement and the nature of the title or interest therein acquired or to be acquired by the company.

(29) The names and addresses of the vendors of any property mentioned in paragraph (28) and the amount (specifying separately the amount, if any, for good will) paid or payable in cash, or securities of the company to the vendors for the property, and where there is more than one vendor or the company is sub-purchaser, the amount so payable to each vendor, provided that where the vendors or any of them are members of a partnership, the members of the partnership shall not be treated as separate vendors; and provided further that where the property consists of securities of any other company purchased or acquired or proposed to be purchased or acquired by the company on substantially similar terms from more than twenty-five separate vendors it shall be sufficient to state the nature and terms of the transaction with particulars of the name and address of each person who is the vendor of securities aggregating more than ten per centum of the total amount of the securities so purchased or acquired or proposed to be purchased or acquired.

(30) The number and amount of securities which, within the two preceding years, have been issued or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those securities have been issued or are proposed or intended to be issued.

(31) A statement of the conditions attached to any securities referred to in the next preceding paragraph whether held or to be held in escrow (and the conditions and expiration of the escrow), pooled or to be pooled and the conditions and the expiration of the pool, or other arrangement.

(32) Full particulars of the nature and extent of the interest, if any, of every director, or proposed director, in the promotion of, or in any property acquired by the company within the preceding two years or proposed to be acquired by the company, or, where the interest of such director, consists in being a member of a partnership, the nature and extent of the interest of the partnership, with a statemnet of all sums paid or agreed to be paid to him or to the partnership in cash or securities or otherwise by any person, either to induce him to become, or to qualify him as a director, otherwise for services renderd by him or by the partnership in connection with the promotion or formation of the company.

(33) The names and addresses of all persons to whom commissions were paid or are to be paid, directly or indirectly in connection with the property purchased or acquired mentioned in paragraph (28), together with the amount of the commissions paid or to be paid to each and the consideration for which such commissions are paid or to be paid.

(34) The dates of, and the parties to, and the nature of every material contract entered into within the two preceding years, and a reasonable time and place at which any such material contract or a copy thereof may be inspected; this requirement shall not apply to a contract entered into in the ordinary course of business carried on or intended to be carried on by the company.

(35) The provisions of the Articles or By-Laws relating to the remuneration of the directors.

(36) The aggregate remuneration paid by the company during its last financial year, if completed at least three months prior to the offer, and estimated to be paid or payable during the current financial year (or if such remuneration is not capable of approximate estimation then the basis of determining same) to directors and (separately stated) to officers who individually have received or may be entitled to receive remuneration in excess of ten thousand dollars per annum.

(37) A list of the names and addresses of counsel who have passed on the legality of the issue proposed under this registration statement.

(38) If any statement made in the registration statement, or any report attached to the registration statement as an exhibit, purporting to have been made by an expert and has been prepared by a person who has any interest in, or is to receive any interest in the security issuer as a payment for such statement, or has been, or is employed by the security issuer or a subsidiary thereof, or another company under common control, or is a partner with any officer or director of the company, or any person that is to become an officer or director, or has been employed upon a contingent basis, a full explanation of the circumstances must be given.

(39) A complete list or lists of all subsidiaries and all parents of the security issuer.

(40) The amount of the consideration received for the issue of shares without nominal or par value set aside as distributable surplus, and the amount per share of the consideration to be received for any such shares comprised in the offer proposed to be set aside as such distributable surplus.

(41) Where shares are offered, the names and addresses of the persons, if known, who, by reason of beneficial ownership of securities of the company or any agreement in writing, are in a position to, or are entitled to, elect or cause to be elected a majority of the directors of the company.

(42) In the case of a company which has been carrying on business for more than one year prior to the filing of the registration statement, a balance sheet as of date not more than 90 days prior to the date of the filing of the registration statement in such detail and in such form as the Registrar shall prescribe. If such statement is not certified by the auditors of the security issuer, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the security issuer, certified by the auditor or auditors of a date not more than one year prior to the filing of the registration statement, shall be submitted.

(43) In the case of a company which has not been carrying on business for more than one year prior to the filing of the registration statement, but which, prior to the filing of the registration statement, has acquired (either by direct acquisition or indirectly by ownership of shares or otherwise) a business which has been carried on for more than one year prior to the filing of the registration statement, a balance sheet of the company so acquired, or, if the company has any subsidiaries, a consolidated balance sheet of the company and all its subsidiaries as at a date subsequent to the acquisition of such business and not more than one hundred and twenty days prior to the filing of the registration statement, certified by the company's auditors and a statement certified by accountants, who shall be named in the registration statement, specifying the nature and value as shown by the books of such business, of any moneys or other assets of such business excluded from such acquisition or distributed or disposed of otherwise than in the ordinary course within six months of such acquisition.

(44) In the case of a company which has been carrying on business for more than one year prior to the filing of a registration statement, a profit and loss statement of the security issuer showing earnings and incomes, the sources thereof, and the expenses and fixed charges, in such detail and such form as the Registrar shall prescribe, for the latest fiscal year for which such statement is available and a report by the auditors of the company with respect to the profits of the company for the two preceding financial years.

(45) If the proceeds, or any part of the proceeds of the securities offered are or is to be applied directly or indirectly in the purchase of any business, or, in the case of a company which has not been carrying on business for more than one year prior to the filing of a registration statement, but which has acquired or proposes to acquire (either by direct acquisition or indirectly by ownership of shares or otherwise) any business, a report made by accountants, who shall be named in the registration statement, upon the profits or losses of the business and the nature and source thereof in respect of each of the three completed financial years thereof immediately preceding the filing of the registration statement or in respect of such less number of completed financial years as such business has been in operation.

(46) A copy of the last annual report to shareholders made by the security issuer prior to the filing of the registration statement.

(47) Copies of all agreements made with the underwriter or underwriters of the proposed issue covered by the registration statement.

(48) Copies of all agreements made with the promoters and copies of all agreements covering the transactions mentioned in paragraph (30) and paragraph (31) of this regulation.

(49) Copies of all reports made by any expert in reference to property now held or to be acquired by the company, which reports are to be circulated or quoted from in any prospectus to be issued by the company.

(50) If the security issuer proposes to engage or is engaged in mining, a satisfactory map and recent report by a competent and disinterested mining engineer, accompanied by a complete report on the sampling results, estimate of tonnage, if blocked out, and assay plan and justification of purchase price.

(51) Copy of the prospectus to be issued to the public.

(52) Copies of any other documents, reports, or any other information which the Registrar may from time to time require, having due regard to the public interest and the protection of investors.

. . . .

24. The Registrar may accept copies of the information filed by the security issuer with any province of Canada or the Secretary of State for Canada or any state or federal regulatory body of the United States of America to qualify the securities for public offering in lieu of the information required in the registration statement as set forth in these regulations.

Appendix B.

National Policy No. 1

NATIONAL POLICIES

NATIONAL POLICY No. 1

CLEARANCE OF NATIONAL ISSUES

To facilitate the acceptance of a prospectus, a short form prospectus, or an initial annual information form (the "AIF") in more than one Canadian jurisdiction and to provide for uniformity of administration, the securities regulatory authorities have agreed upon the procedure which may be followed by an underwriter or an issuer or a selling security holder (sometimes referred to herein as the "issuer") wishing to clear such documents in more than one jurisdiction.

1. Prospectus or Annual Information Form

The procedure for a prospectus or an AIF is as follows:

(a) The preliminary prospectus, pro forma prospectus or AIF, together with any supporting materials, shall be filed, as nearly as may be practicable, contemporaneously with the administrator in each of the jurisdictions in which it is proposed to qualify to distribute the issue or to become eligible to participate in the Prompt Offering Qualification System (the "POP System"), as the case may be. The preliminary or pro forma prospectuses or the AIFs filed in each jurisdiction shall be identical in form and content, including signatories and dating, except that French language documents filed in Quebec need not be filed in the other jurisdictions. (The processing of documents filed in Quebec in the French language, apart from substantive comments applying to both English and French language versions, will ordinarily be dealt with between Quebec and the issuer or its agent in Quebec directly.)

(b) The principal jurisdiction will normally be selected by the issuer. The selected jurisdiction may or may not agree to act in such capacity. The issuer shall advise each of the jurisdictions in which the preliminary prospectus, pro forma prospectus or AIF is filed of the name of the principal jurisdiction and each of the other jurisdictions in which it is proposed to qualify to distribute the issue or to become eligible to participate in the POP System.

(c) The principal jurisdiction will review the material and will use its best efforts to issue the first comments by letter, telex or telecopy (the "Comment Letter") within ten working days from the date of the receipt for the preliminary prospectus or the date the pro forma prospectus or AIF was received. The first Comment Letter will be transmitted by the principal jurisdiction immediately to each of the other filing jurisdictions and to the issuer or the issuer's solicitor. If applicable, the principal jurisdiction will, unless otherwise requested, advise the issuer or issuer's solicitor by telephone that the Comment Letter is available to be picked up.

(d) The other jurisdictions will use their best efforts to advise the principal jurisdiction of any additional comments within five working days of receipt of the first Comment Letter. If any such jurisdiction has no comments it will advise the principal jurisdiction that it has no comments or, if it is not yet in a position to make its comments at the end of the five day period, it will advise the principal jurisdiction as to the date upon which its comments will be available. If the principal jurisdiction has not received a response from one of the other filing jurisdictions within the above-mentioned five-day period, the principal jurisdiction will generally contact such filing jurisdiction and enquire as to the status of the latter's response.

(e) On the basis of the additional comments, the principal jurisdiction will then prepare and forward a second Comment Letter. Subject to the principal jurisdiction's discretion, the second Comment Letter will usually be sent after all of the other jurisdictions have advised the principal jurisdiction of their comments or that they have no comments. The second Comment Letter will identify the jurisdictions issuing the comments and will be delivered in the same manner as the first Comment Letter. The principal jurisdiction may, in its discretion, forward comments from other jurisdictions to the issuer or the issuer's solicitor prior to the receipt by it of comments or advice that jurisdictions have no comments from all of the other jurisdictions.

(f) The issuer or the issuer's solicitor will provide the principal jurisdiction with written responses to the first Comment Letter. The issuer or the issuer's solicitor will provide each non-principal jurisdiction issuing comments with written responses to the comments of the non-principal jurisdiction contained in the second and subsequent Comment Letters, with a copy to the principal jurisdiction. Each other jurisdiction will advise the principal jurisdiction whether it is satisfied with the response to its comments and is clear for the issuance of a receipt following review of a blacklined prospectus (in Quebec, the French language version) as contemplated in paragraph (h) and upon the filing of final material. If a jurisdiction advises that it is not satisfied and the principal jurisdiction concludes that the comment or comments could be most effectively dealt with by such jurisdiction, the principal jurisdiction shall so advise such jurisdiction and direct the issuer to deal directly with that jurisdiction to resolve the comment or comments. The issuer will advise the principal jurisdiction as to any changes agreed upon and the jurisdiction having issued the comment or comments will advise the principal jurisdiction when it is satisfied with the response and is clear for the issuance of a receipt upon the filing of final material.

(g) Issuers and their representatives are cautioned against dealing directly with jurisdictions other than the principal jurisdiction in an attempt to resolve comments without clearance from the principal jurisdiction, which must be kept aware at all times of such dealings and their resolution.

(h) Except in the case of short form prospectuses, it is strongly recommended that a draft prospectus or draft AIF (the French language version, in Quebec), blacklined to show changes (other than pricing information), be sent to the principal jurisdiction and to any other jurisdiction having substantive comments, as far as possible in advance of filing final material. (This blacklined version is in addition to the blacklined version of the final prospectus to be filed with final material.)

(i) When the principal jurisdiction is satisfied that all comments have been resolved and has received a signed prospectus or AIF, together with any accompanying material in acceptable form, the principal jurisdiction will issue a final receipt or a notice of acceptance for filing for the final prospectus or AIF respectively, as the case may be, and will advise the other jurisdictions immediately by telex or telecopier letter that a final receipt or notice has been issued.

(j) The signed final material shall be filed, as nearly as may be practicable, contemporaneously in each of the other jurisdictions. The other jurisdictions will issue final receipts or notices after receipt by them of acceptable final material and after receipt of the advice as to the issuance of the final receipt or notice by the principal jurisdiction.

(k) In the event that any Comment Letter or response is too lengthy for convenient transmittal to another jurisdiction by electronic means, the principal jurisdiction will, in the case of a Comment Letter, forward it by courier and, in the case of a response, request that the issuer forward such response to the other jurisdiction(s). Enclosures requested by a particular jurisdiction should always be sent directly by the issuer to such jurisdiction.

(l) A jurisdiction will not act as principal jurisdiction if it does not wish to participate actively in the process contemplated by this Policy and the principal jurisdiction will assume that any such jurisdiction will not have comments unless such comments are received by the principal jurisdiction within the five day time limit set forth in paragraph (d) above. As of the date of publication of this Policy, the securities regulatory authorities of New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon and the Northwest Territories have indicated that they wish to be included in the process contemplated by this Policy but will not participate actively in the process and accordingly will not normally respond to the principal jurisdiction.

(m) The procedure adopted by this Policy is for the convenience of the investment community. It involves no surrender of jurisdiction by any regulatory authority.

Each of the administrators will retain in its entirety the statutory discretion vested in such administrator to review, accept or reject a particular prospectus or AIF.

(n) The table attached hereto and forming a part of this Policy indicates the material that is required in connection with the filing of a preliminary prospectus, a pro forma prospectus, a final prospectus and an initial AIF in the various jurisdictions as well as the material required in connection with a filing under National Policy No. 36. The table will be amended on an annual basis following the [fall] meeting of the Canadian Securities Administrators.

2. Short Form Prospectus

The above-described procedures for clearing a prospectus or AIF in more than one jurisdiction apply *mutatis mutandis* to the clearance of a short form prospectus in more than one jurisdiction subject to the following timing and related procedural modifications:

(a) The principal jurisdiction will provide by telex or telecopy any comments on the contents of the preliminary short form prospectus (but excluding any comments on the material incorporated in the preliminary short form prospectus by reference) to the other jurisdictions involved, as well as to the issuer within three working days following the filing of the preliminary short form prospectus with the principal jurisdiction.

(b) Within two working days from the day of receipt of the comments, if any, from the principal jurisdiction, the other jurisdictions will furnish the principal jurisdiction by telex or telecopy with any additional comments they may have on the contents of the preliminary short form prospectus. If the principal jurisdiction receives no comments from any other jurisdiction within such additional two working day period, it will be assumed that such jurisdiction will accept the filing of the short form prospectus in final form.

(c) Notwithstanding the foregoing, where, in the opinion of the principal jurisdiction, the proposed offering is too complex to be reviewed adequately within the time periods prescribed herein for a short form prospectus, the time periods applicable to prospectuses and AIFs under this Policy shall apply and the principal jurisdiction shall, within one working day of the filing of such preliminary short form prospectus, so notify the issuer and the other jurisdictions.

(d) For the procedures in respect of annual information forms other than initial annual information forms, reference should be made to the POP System rules and procedures of the applicable jurisdiction. As of the date of publication of this Policy, the securities regulatory authorities of British Columbia, Yukon, the Northwest Territories, Alberta, Saskatchewan, Manitoba, Ontario and Quebec have adopted compatible policies or are subject to compatible legislation introducing the POP System.

3. The National Policy No. 1 Receipt System (the "Receipt System")

Issuers filing a short form prospectus under the Prompt Offering Qualification System may elect to receive a single National Policy No. 1 Receipt that permits securities to be distributed in all jurisdictions in which a preliminary prospectus has been filed and which have not opted out of the System during the review process. The National Policy No. 1 Receipt will bear on its face the following legend:

"This National Policy No. 1 Receipt confirms that receipts of (each of the provinces or territories of Canada [except —]) have been issued".

The National Policy No. 1 Receipt provides evidence of the approval of the issuer's prospectus by all participating jurisdictions and of the notional issue of a receipt therein. The National Policy No. 1 Receipt will be made available to the issuer by the principal jurisdiction. It is not necessary for the issuer to obtain a separate receipt document from a non-principal jurisdiction in order to commence distribution of its securities. However, each non-principal jurisdiction will subsequently provide the issuer with a receipt dated as of the same date as the National Policy No. 1 Receipt if the fee and final material filed are acceptable.

When the issuer files a preliminary short form prospectus and elects this Receipt System, it must file with each non-principal jurisdiction its undertaking to the non-principal jurisdiction to file final material together with, where appropriate,[1] the required fee, within 3 working days following the day of issue of the Receipt System receipt. Where there are comments or changes, additional filing will be required (see below). Issuers will file the usual final material with the principal jurisdiction.

Unless a non-principal jurisdiction advises the principal jurisdiction otherwise, silence as of the end of the second working day[2] next following the day on which the first comments were sent by the principal jurisdiction will constitute confirmation to the principal jurisdiction that the material reviewed complies with the requirements of the relevant securities legislation to the extent that, assuming the final material were substantially similar, a receipt would issue in that jurisdiction. The principal jurisdiction is therefore authorized to issue a receipt that provides evidence that the non-principal jurisdiction's approval has been granted, and a receipt notionally issued by that jurisdiction, subject to the terms of the undertaking to file final material described below. The principal jurisdiction must notify the non-principal jurisdiction at once that the National Policy No. 1 Receipt has been issued.

The Receipt System is primarily intended to facilitate national distributions of securities under "clean" (i.e. no comments) short form prospectuses that are not altered by the issuer. Where comments are raised, or the issuer wishes to make changes prior to filing final material, additional clearance procedures are involved, requiring additional time.

If a non-principal jurisdiction makes comments, the comments will be communicated to the issuer directly, with a copy to the principal jurisdiction, and resolved between the issuer and the non-principal jurisdiction. However, if changes are made to prospectus as a result of the comments and Quebec is a non-principal jurisdiction, blacklined facsimiles of the relevant pages of the final prospectus in both French and English must be provided to Quebec. Because Quebec has an obligation to clear a French language prospectus, it also requires a signed copy of both English and French versions of the final prospectus in all cases. In this case, as in all others, authorization must be specifically communicated by Quebec to the principal jurisdiction before the principal jurisdiction will issue a National Policy No. 1 Receipt that includes Quebec. For the other jurisdictions, silence as of the end of the later of the second working day next following the day on which the first comments were sent by the principal jurisdiction or noon on the working day next following that on which a copy of any changes was filed, will constitute approval of the prospectus including any changes that were made thereto, and authorization for the principal jurisdiction to issue a National Policy No. 1 Receipt as evidence of approval and the notional issue of a receipt in that jurisdiction.

A non-principal jurisdiction may opt out of the Receipt System at any time prior to the issue of the National Policy No. 1 Receipt. Opting out will be communicated by a telex or facsimile to that effect sent to the principal with a copy to the issuer. In this case, the National Policy No. 1 Receipt will no longer constitute evidence that the review and approval process has occurred in that non-principal jurisdiction, and therefore the issuer must deal separately with that jurisdiction in respect of a receipt. The legend on the National Policy No. 1 Receipt will specify those jurisdictions on whose behalf it is not issued.

The following chronology illustrates the integration of the Receipt System procedures into the existing POP system procedures:

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[1] Although all jurisdictions require a basic fee be filed with the preliminary prospectus, Ontario and B.C. require that an additional fee be filed with final material.

[2] For purposes of establishing that a working day has concluded, the time zone of the relevant jurisdiction will apply. From the point of view of the principal jurisdiction, the time zone of the principal jurisdiction will establish the end of the initial 3 day review period, and the time zone of the most westerly non-principal jurisdiction will establish the end of the subsequent 2 day review period.

Time zone of principal jurisdiction

Day 1: Preliminary short form prospectus is filed in selected principal and non-principal jurisdictions. Covering letter indicates election of Receipt System receipt.

Issuer provides an undertaking to each non-principal to file a copy of the final material and any required additional fee within 3 working days following the day of issue of a National Policy No. 1 Receipt on its behalf. If no National Policy No. 1 Receipt is issued in respect of a jurisdiction, the undertaking to that jurisdiction is void.

Preliminary prospectus receipts are provided in each jurisdiction where issued.

Day 2: POP system review by principal jurisdiction.

Day 3: POP system review by principal jurisdiction.

Day 4: First comment telex or facsimile sent by the principal jurisdiction to the non-principal jurisdictions, including notation "N.P. No. 1 filing per Item 3 of N.P. No. 1" or equivalent.

> As part of their participation in the Receipt System, all jurisdictions have agreed that unless a non-principal jurisdiction advises the principal jurisdiction otherwise, silence as of the end of the second working day next following the day on which the first comment telex or facsimile was sent by the principal jurisdiction will constitute confirmation to the principal jurisdiction that the material reviewed complies with the requirements of the relevant provincial securities legislation to the extent that, assuming the final material were substantially similar and the comments of the principal or any other jurisdiction were addressed, a receipt would issue in that jurisdiction. The principal jurisdiction is therefore authorized to issue a receipt that provides evidence of that approval, subject to the undertaking referred to under "Day 1" for all jurisdictions except Quebec. Because Quebec has a unique obligation to clear a French language prospectus, it requires a signed copy of both English and French versions of the final prospectus. The National Policy No. 1 Receipt will not be issued by the principal until it has received a telex from Quebec specifically authorizing the issue by the principal of the N.P. No. 1 Receipt.

Responses are only required from non-principal jurisdictions that have made comments, or that wish to opt out of the Receipt System and issue a separate receipt.

Time zone of most westerly jurisdiction in which issuer has filed

Day 5: POP system review by non-principal.

Day 6: POP system review by non-principal jurisdictions.

Comments and/or "opting out" telex or facsimile, if any, sent directly to issuer with a copy to the principal jurisdiction.

Day 7: (a) *if no comments by any non-principal jurisdiction*

Silence as of end of Day 6, except for Quebec, indicates approval of material filed and authorization of the principal jurisdiction to issue a National Policy No. 1 Receipt as evidence of that approval, provided that the issuer has made no substantive changes in disclosure from the preliminary prospectus. Quebec requires a signed English and French version of the final prospectus even if identical to the preliminary and will send a telex indicating authorization to the principal to issue a National Policy No. 1 Receipt in respect of both versions.

(b) *if comments by non-principal jurisdiction*

Issuer and principal receive a comment telex or facsimile.

Issuer subsequently responds to the comments by dealing directly with non-principal jurisdiction.

When the comments are clear, the non-principal jurisdiction notifies the principal by telex or facsimile.

Upon receipt of the clearance telex or facsimile, the principal jurisdiction is implicitly authorized, except by Quebec, to issue a National Policy No. 1 Receipt evidencing the non-principal jurisdiction's approval of the material filed as constituting a prospectus, conditional on compliance with the undertaking. Quebec will follow the same procedure as that described in case (a).

In neither case (a) nor (b) does the principal jurisdiction send a second comment telex or facsimile to the issuer summarizing comments or approvals of the other jurisdictions.

(c) *if final prospectus contains substantive changes (other than pricing) initiated by issuer*

The issuer must send in advance facsimiles of the French and English versions of the changed pages to Quebec. As in case (b) above, the principal jurisdiction will not issue a National Policy No. 1 Receipt as evidence of Quebec's approval as non-principal, until it has received a telex or facsimile from Quebec confirming the receipt and acceptance of the facsimile material.

The issuer must also provide in advance copies of the changed pages to all other jurisdictions, but silence as of noon on the working day next following that on which the changes are filed will serve as notice of approval to the principal jurisdiction; of course, a telex indicating that the non-principal is clear may be sent prior to this deadline.

Day X: Issuer files final material and fee in the principal jurisdiction.

The decision by a non-principal jurisdiction not to notify the principal jurisdiction of any objections by Day X is, in the context of the Receipt System procedures, a notional issue of a receipt within that jurisdiction immediately prior to the issue of the National Policy No. 1 Receipt.

Issuer files signed copy of both English and French versions of prospectus in Quebec, if Quebec is non-principal.

Quebec notifies principal jurisdiction that it is clear

Principal jurisdiction issues National Policy No. 1 Receipt confirming the notional issuance of a receipt by all jurisdictions in which final material has been filed and that have not opted out.

The principal jurisdiction notifies all participating non-principal jurisdictions by telex or facsimile that National Policy No. 1 Receipt has been issued.

Some jurisdictions may also provide an additional receipt on the issue of the National Policy No. 1 Receipt. Quebec will issue a receipt in all cases.

Distribution commences in all relevant jurisdictions.

Day X+3: Issuer files final material and the appropriate fee in each participating non-principal jurisdiction in compliance with its undertaking.

If the fee and final material are acceptable, and no receipt has yet been issued, some non-principal jurisdictions may issue a receipt to issuer, dated as of the date of the National Policy No. 1 Receipt.

TABLE OF DOCUMENTS TO BE FILED IN RESPECT OF THE CLEARANCE OF NATIONAL ISSUES

A table of documents to be filed in the various jurisdictions in connection with the clearance of national issues is published immediately following as part of National Policy No. 1. The Canadian Securities Administrators have agreed that compliance with the filing requirements set out in the table shall be considered to satisfy filing requirements associated with clearing a national issue. Amendments to the table will be made not more frequently than annually, and will be made and published after the spring meeting of the Canadian Securities Administrators.

TABLE OF DOCUMENTS TO BE FILED IN RESPECT OF THE CLEARANCE OF NATIONAL ISSUES

	ALBERTA (see note (f))	BRITISH COLUMBIA (see note (j))	MANITOBA	ONTARIO	QUEBEC	SASKATCHEWAN	NOVA SCOTIA
(a) The following types and numbers of documents should be filed with a preliminary prospectus							
• Preliminary prospectus—signed	1(P)(A)	1(P)(A)	1	1(P)(A)	1 French 1 English	1	1
• Preliminary prospectus—unsigned	3(P)(g)	—	1	4(P)	4 French 1 English	1	1
• Auditor's comfort letter, if applicable	1(P)(R. 119)	1(P)	1	1(P)(R. 54)	1(R. 54, 55)	1	1
• Directors' resolution (certified)	1(P)	—	1	1(P)	1	1	1
• Technical reports, consents, and certificates of qualification, etc.	2(P)	—	1	2(P)(R. 25)	1	1	1
• Cross-reference sheet	1(P)(R. 98(2)(3))	1(P)	1	—	—	1	1
• Filing fee	1(P)(R. Sched. 1. s.2(1))	1(R)(k)	1(m)	1 (R. Sched. 1 (p)) ($250)	1(R. 267(l))	1 ($600)	1 ($600)(r)
• Covering letter	—	(q)	—	—	—	—	1
(b) The following types and numbers of documents should be filed with a pro forma prospectus (and pro forma summary statement, if applicable):							
• Pro forma prospectus—unsigned	1(P)	—	2	3	4 French 1 English	1	1
• Pro forma prospectus—black-lined	1(P)(h)	1(P)	1	1	1 French 1 English	1	1
• Pro forma summary statement, if applicable	1(P)	—	1	3	—	1	1
• Pro forma summary statement, if applicable—red-lined	1(P)	—	1	1	—	1	1
• Auditor's comfort letter, if applicable	1(P)(R. 119)	1(P)	1	1(R. 54)	1(R. 54, 55)	1	1
• Technical reports, consents, and certificates of qualification, etc.	2(R. 90)	—	1	2(R. 25)	1	1	1
• Cross-reference sheet	1(P)(R. 98(2)(3))	1(P)	1	—	1	1	1
• Filing fee	1(P)(R. Sched. 1. s. 2(1))	1(P)	1(m)	1(R. Sched. 1) ($250)	1(R. 267)	2 ($600)	1 ($600)(r)
• Directors' resolution	1(P)	—	—	—	—	—	—

TABLE OF DOCUMENTS TO BE FILED IN RESPECT OF THE CLEARANCE OF NATIONAL ISSUES

	ALBERTA (see note (f))	BRITISH COLUMBIA (see note (j))	MANITOBA	ONTARIO	QUEBEC	SASKATCHEWAN	NOVA SCOTIA
The following types and numbers of documents should be filed with a final prospectus (and summary statement, if applicable):							
• Prospectus—signed	1(P)(A)	1(P)	1	1(P)(A)	1 French 1 English	1	1
• Prospectus—signed or unsigned	1(P)	—	1	4(P)	1 French 1 English	1	1
• Prospectus—black-lined	1(P)	1(P)	1	2(P)	1 French 1 English	1	1
• Summary statement, if applicable	2(P)	1(P)	1	4	—	1	1
• Summary statement, if applicable—red-lined	1(P)	1(P)	1	2	—	1	1
• Auditor's consent letter	1(P)(R. 85)	1(P)	1	1(P)(R. 23)	1	1	1
• Auditor's comfort letter, if applicable	1(P)(R. 118(3))	—	1	1(P)(R. 53)	1	1	1
• Counsel's consent	1(P)(R. 85)	—	1	1(P)(R. 23)	1	1	1
• Consent of other experts	1(P)(R. 85)	1(P)	1	1(P)(R. 23)	1	1	1
• Directors' resolution (certified)	1(P)	1(P)	1	1(P)	1	1	1
• Copies of underwriting or agency agreement and any other material contract requested by Commission staff—signed or notarized	1(P)	—	1	1(P)	1	1	1
—copies	—	—	—	1(P)	—	—	—
• Estimate of proceeds to be realized in jurisdiction and appropriate filing fee	—	—(k)	—	1(P)(R. Sched. 1 (n))	—(l)	—	—
• Underwriter's certificate, if applicable	1(R. 102)	—	—	1(P)(R. 68)	—	—	1
• Cross-reference sheet	1(P)(R. 98(2)(3))	1(P)	1	—	—	1	
• Prospectus and summary statement, if applicable—commercial copies	2(P)(i)	2(P)	2	2	5	2	2
• Commercial copies	2(P)(i)	2(P)	2	2	5	2	2

TABLE OF DOCUMENTS TO BE FILED IN RESPECT OF THE CLEARANCE OF NATIONAL ISSUES

	ALBERTA (see note (f))	BRITISH COLUMBIA (see note (j))	MANITOBA	ONTARIO	QUEBEC	SASKATCHEWAN	NOVA SCOTIA
The following types and numbers of documents should be filed with an amendment to a preliminary prospectus and an amendment to a prospectus:							
• Amendment—signed	1(P)	1(P)	1	1	1 French 1 English	1	1
• Amendment—unsigned	2(P)	—	1	4	4 French 1 English	1	1
• Directors' resolution (certified)	1(P)	1(P)	1	1	1	1	1
• Filing Fee	1(P)(R. Sched. 1. s. 2(4))	1(R)	1	1 (R. Sched. 1) ($100)(n)	1(R. 267)	1 ($100)	1 ($100)
The following types and numbers of documents should be filed with an annual information form:							
• Annual information form—signed	1(P)	1	1	1	1 French (o) 1 English	1	1
• Annual information form—unsigned	2(P)	—	1	2	2 French (o) 1 English	1	1
• Directors' resolution (certified)	1(P)	—	1	1	1	1	1
• Certificate of issuer re eligibility	1(P)	1(P)	1	1	1	1	1
• Undertaking to Commission of issuer to provide documents to any person or company on request	1(P)	1(P)	1	1	—	1	1
• Material incorporated by reference	1(P)	—	1	1	1 French (o) 1 English	1	1
• Filing Fee	1(P)(R. Sched. 1. s. 2(8)(9)	—	1(m)	1 (R. Sched. 1) ($1000)	R. 268	1 ($600)	1 ($850)(s)

GEND: Brackets show derivation of requirement
A = Act
R = Regulation
P = Policy Statement (Alberta 4-7 (see note (f)), British Columbia 3-03 and 3-40, Ontario 5.1)

NOTES

(a) In Newfoundland, one executed copy of the preliminary prospectus together with the filing fee of $250 and one executed copy of the final prospectus together with a completed Part IV form must be filed.

(b) Prince Edward Island requires one executed copy of the preliminary prospectus together with the filing fee of $150 and one executed copy of the final prospectus.

(c) New Brunswick's filing requirements may be met by filing one executed copy of a preliminary prospectus, final prospectus or AIF or one unexecuted copy of a pro forma prospectus or summary statement, as applicable, together with one copy of all applicable comfort letters and consent letters. Filing fee for first class or unit where (a) principal jurisdiction is New Brunswick is $1,000; (b) the principal jurisdiction is other than New Brunswick, $500; and for each additional class or unit an additional $100. For filing an amendment to a prospectus the fee is $100. There are no fees for AIF's.

(d) The Yukon's filing requirements are:

(i) for a preliminary, pro forma, and final prospectus—one executed copy of the prospectus together with a copy of the final receipt issued by the principal jurisdiction or telex confirmation of same;

(ii) for the POP system—one executed copy of the AIF and a copy of the receipt or telex confirmation of same; and

(iii) the filing fee of $10.

(e) The filing requirements of the Northwest Territories are similar to those of Ontario, except that:

(i) only one copy of each applicable document need be filed;

(ii) unsigned copies of a preliminary prospectus, pro forma prospectus or summary statement, final prospectus or summary statement and AIF need not be filed; and

(iii) extra photostat copies of material contracts and an estimate of proceeds to be realized need not be filed.

(f) Filing requirements for Alberta are contained in ASC local Policy 4-7.

(g) In Alberta, if a preliminary prospectus is supported by a report of a consultant, four unsigned copies of the preliminary prospectus are required.

(h) A black-lined copy of the pro forma prospectus filed under section 97 of the *Securities Act* (Alberta) showing all changes from the previous prospectus and accompanied by the certificates required by National Policy 30.

(i) To be forwarded as soon as available.

(j) For British Columbia, the prospectus filing requirements are contained in B.C. Local Policy 3-03 and the AIF filing requirements are contained in B.C. Local Policy 3-40. Where B.C. is the principal jurisdiction and/or where the issuer is a junior company which is planning to seek a listing on the Vancouver Stock Exchange, a detailed review of B.C. Local Policy 3-03 should be made to determine the additional prospectus filing requirements which apply.

(k) The Fee Schedule contained in Section 183 of the B.C. regulations requires the payment of a filing fee upon the filing of a preliminary prospectus or pro forma prospectus equal to the aggregate of:

(i) $2,000, where the preliminary prospectus or pro forma prospectus relates to only one type, class or series of security, or, where the preliminary prospectus or pro forma prospectus relates to more than one type, class or series of security, $2,000 for each issuer plus $500 for each additional type, class or series of security per issuer; plus

(ii) $1,000, where security holders are proposing to distribute securities using the preliminary prospectus or pro forma prospectus.

The fee payable upon the filing of a final prospectus is the amount by which .03% of the proceeds derived from the distribution in B.C. exceeds the fees payable with the filing of the preliminary prospectus.

Where the proceeds to be derived from the distribution in B.C. cannot be ascertained at the time of the initial filing, the issuer must submit an undertaking to provide a

breakdown of the sales in B.C. together with any additional fee required within 10 days of the conclusion of the subscriptions. A fee of $250 is payable upon the filing of an amendment to a preliminary or final prospectus.

(l) In Quebec, a further filing is required upon cessation of distribution (Quebec R. 36 and 94) and the payment of an additional fee, if appropriate.

(m) An additional fee is payable if Manitoba is the principal jurisdiction—R. 3(j).

(n) Schedule 1 to the Ontario regulations requires the payment of a fee of $250 upon the filing of a preliminary prospectus. The fee on filing of the final prospectus is the amount by which 0.03% of the total maximum gross proceeds to be realized from the distribution exceeds the $250 fee paid upon the filing of the preliminary prospectus. In the case of an amendment to a prospectus, the fee is $100 and 0.03% of the total maximum gross proceeds to be realized from any additional securities to be distributed under the prospectus as a result of the amendment. In the case of both final prospectus and an amendment to a prospectus involving issuance of additional securities, Schedule 1 includes a provision for providing written notice to the Commission within 12 months after the date of the prospectus in order to obtain a refund of the excess of the fee paid over the amount of fee that would have been payable had the total gross proceeds realized in Ontario from the distribution been used in making the calculation rather than the total maximum gross proceeds of the distribution across the country.

(o) Quebec only requires a French version of the annual information form and material incorporated by reference at the time of filing of the short form prospectus.

(p) An undertaking addressed to each other jurisdiction in which the final prospectus will be filed must be delivered with final material to the principal jurisdiction to the effect that acceptable final material will be delivered to the other jurisdictions in connection with a National Policy No. 1 Receipt filing.

(q) A covering letter filed with the preliminary prospectus in British Columbia must specify that the filing is made under National Policy No. 1, the nature of the filing, the principal jurisdiction selected, the type of receipt requested, and the schedule anticipated for the review and clearance of the documents submitted.

(r) A fee of $1,000 is payable if Nova Scotia is the principal jurisdiction. If a preliminary prospectus, pro forma prospectus or statement of material facts involves more than one class of securities or more than one type of unit offering, each additional class of securities or each type of unit offering shall be accompanied by an additional fee of $250.

(s) Filing of an AIF in Nova Scotia is in effect treated as a shelf prospectus, and may be accepted for filing by the Registrar pursuant to the power to vary the prospectus form under subsection 5(2) of the Securities Regulations. The exercise of the Registrar's discretionary power is made upon application in accordance with the Nova Scotia Securities Commission's published policy.

(t) Filing of Prospectuses and Offering Memorandums in Newfoundland require a contractual right of action for purchasers of securities to be included in the prospectus or offering memorandum. The contents of the contractual right of action is specified under Newfoundland Policy Statement No. 1.

THE SECURITIES ACT
NEWFOUNDLAND

POLICY STATEMENT No. 1

1. Under subsection 13(3) of *The Securities Act*, the "registrar may, in any case where he deems it to be in the public interest, refuse . . ." to issue a receipt for a registration statement. It is considered to be in the public interest that residents of the Province have civil protections similar to those in other jurisdictions of Canada and, accordingly, the registrar will refuse to issue a certificate for a registration statement which does not include in the prospectus a contractual right of action for purchasers of securities in the prospectus similar to the following:

(a) A purchaser of securities is required to be provided with a copy of the prospectus (or an offering memorandum) and an agreement of purchase and sale is not binding

on the purchaser, if the issuer, or agent thereof, receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus (or an offering memorandum) and any amendments thereto. Where the required prospectus (or an offering memorandum) and any amendments thereto are sent by prepaid mail, the same shall be deemed conclusively to have been received in the ordinary course of mail by the person to whom it was addressed. The onus of proving that the time for giving notice by the purchaser has expired is on the issuer, or agent thereof, if any.

(b) (i) Where a prospectus (or an offering memorandum), together with any amendment to the prospectus (or an offering memorandum), contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages against the issuer or a selling security holder on whose behalf the distribution is made or the purchaser may elect to exercise a right of rescission against such person, in which case he shall have no right of action for damages against such person.

(ii) No person is liable under subsection (i) if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

(iii) In an action for damages pursuant to subsection (i), the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

(iv) In no case shall the amount recoverable under this section exceed the price at which the securities were offered.

(v) The right of action for rescission or damages will be exercisable by a purchaser only if the purchaser gives notice to the issuer or selling security holder not later than ninety days after the date on which payment was made for the securities or after the initial payment, where payments subsequent to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment.

(vi) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

(c) "Misrepresentation" means

(i) an untrue statement of material fact, or

(ii) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

NOTICE—NATIONAL POLICY No. 1-2
"GUIDE FOR MINING ENGINEERS, GEOLOGISTS AND PROSPECTORS"

National Policy No. 1-2 should be read in conjunction with Ontario Policy No. 5.1 as it is supplementary and complementary to that Policy to meet local conditions in Ontario.

NATIONAL POLICY No. 2-A
GUIDE FOR ENGINEERS, GEOLOGISTS AND PROSPECTORS SUBMITTING REPORTS ON MINING PROPERTIES TO CANADIAN PROVINCIAL SECURITIES ADMINISTRATORS

General

Reports submitted must be engineering documents. They must be factual and the recommendations must be warranted in the light of the information and data presented in the report. The author must state that, in his judgment, the venture is of sufficient merit to make the work recommended a worthwhile undertaking.

Appendix C.

Code Report (Conclusions)

II. CONCLUSIONS

1. Effect of the Regulation of FIC and AIC on the Reasons for their Financial Failure

In considering the regulation of FIC and AIC in the 1980s, I am struck by both the inability and the unwillingness of the regulators to ensure that the companies observed appropriate financial safeguards for the protection of investment contract holders and prospective investors. In my opinion, the evidence tends to show that this inability and unwillingness are integral to an understanding of the reasons for the financial failure of FIC and AIC.

The inability resulted from the regulation of the companies under the *ICA* when the vast majority of the certificates they sold were not "investment contracts" and the lack of effective financial safeguards in the *ICA* to deal with such certificates.

The evidence shows that CCA was aware from the late 1970s that a significant change in the type of products sold by FIC and AIC had taken place, and that most of the certificates sold by the

companies were single pay certificates, which I have found not to be "investment contracts" as defined in the *ICA*. The evidence shows that CCA was aware that the regulation of the sale of such certificates required application of a capital ratio and larger capital base requirements than provided in the *ICA*. Indeed, it was that awareness that prompted the repeated recommendations by the Audit Section and various Superintendents for amendment of the *ICA*.

In the absence of statutory requirements which could be applied to the sale of such certificates, CCA attempted to obtain the agreement of FIC and AIC to adhere to certain requirements, including a 25:1 capital ratio, mortgage guidelines and prior approval of intercorporate transactions. When the companies failed to abide by the agreements, the regulators had no means by which to enforce compliance.

The evidence tends to show that had the sale of single pay certificates and the contract application forms not been approved by the regulators, FIC and AIC would have had to: (1) discontinue their sale, (2) obtain approval elsewhere, such as the ASC where proper safeguards could have been required, or (3) seek amendment of the *ICA* to include such certificates with the appropriate safeguards.

In the result, FIC and AIC were able to sell single pay term certificates in competition with trust companies and banks selling GICs, but without having to adhere to any comparable capital base and capital ratio requirements. I find that the evidence tends to show that this was a major reason for the financial failure of FIC and AIC.

The regulators' unwillingness is apparent from their lack of action once they knew the companies were no longer viable and, while not a cause of the failure on June 30, 1987, was a reason for the failure on that date, when the failure was recognized earlier by the regulators but not acted upon.

The evidence tends to show that CCA recognized by the summer of 1984 that FIC and AIC were no longer viable. Hutchison testified that his annual examination reports showed that FIC and AIC were technically insolvent as at December 31, 1983 although they were able to continue operating by using new money to pay maturing liabilities. In his opinion, the companies were headed for disaster and he could not understand why no action was being taken. [26480-1; 26490; 26641] Eldridge shared that view. [27423-5] Darwish held a similar opinion; he believed that it was clear by the summer of 1984 that FIC and AIC were headed for liquidation or bankruptcy unless capital in the magnitude of $72 million was injected. [25909-12]

At that time the regulators were advised that PGL, historically the source of capital for FIC and AIC, was not prepared to put additional capital into the companies. It follows that there existed a state of affairs that was prejudicial to the interests of the investment contract holders. FIC and AIC could not satisfy the s. 8 tests, yet were continuing to sell investment contracts, contrary to s. 31 of the *ICA*. The evidence shows that the regulators allowed FIC and AIC to continue to operate when there was no hope of recovery.

The foregoing conclusion is consistent with the evidence of Barefoot, who testified as follows:

Q All right. When, in your opinion, would you have pulled the licences of these companies?

A In my opinion?

Q Yes.

A Certainly no later than after the Hutchison annual exam.

Q And what point in time specifically is that, I'm sorry.

A I believe that was the 1984 audit.

Q You would have pulled their licences in 1984?

A Certainly no later than that.

Q Okay. And can you tell me, sir, what would be the basis, I believe you mentioned the Hutchison exam. Can you tell me specifically the basis on which you form your opinion in that regard?

A The serious deterioration of the portfolio at that point in time, if there would have been a detailed cash flow analysis in terms of the companies' ability to ever work itself out of that cash flow problem, at that point in time, I believe would have demonstrated that without significant capital injections from someone, whether it be the government or some recovery plan, or from one of the parent corporations would have been clear, at that point, that this company wasn't viable, or recoverable.

Q Is what you are telling me, sir, that in 1984, in your view, there was no prospect of recovery or there was some prospect of recovery?

A The only prospect of recovery, at that point, would have been through some bail-out proposal.

Q And so in your view, absent that, and by 1984 there would have been — the companies essentially would not have been viable, is that what you are telling me?

A No later than.

Q What do you mean by no later than?

A Could have been earlier, but I don't know for sure. [36846-7]

It is also consistent with the evidence of Allan, as follows:

Q So I take it that you determined and formed the opinion that AIC and FIC were insolvent at the end of 1983 or sometime in 1984?

A Yes, based on the financial statements of AIC and FIC, we say thay are insolvent, again on an asset test basis at the end of 1983. [36121]

An asset test basis meant that the liabilities exceeded the assets. [36119-20]

Allan further testified:

Q In your opinion, were these group of companies, that is PGL and AIC, FIC viable entities in 1985 and 1986?

A No, I don't believe they were. [36230]

Allan testified that in his opinion, using the asset test basis, PGL was insolvent by the end of 1984 and possibly in 1983 as well. [36118-20]

2. Conduct of Those Persons Involved in the Regulation of FIC and AIC

From my review of the provisions of the *ICA*, I have concluded that the statute was intended to be for the protection of the public, both existing and prospective investment contract holders.

It is settled law that public authorities must act in accordance with the objects and intent of their empowering statute: See Appendix 5 considering the Duties of Public Authorities.

It follows that the various public officials concerned with the regulation of FIC and AIC were to carry out their duties and responsibilities in furtherance of the purpose and objects of the *ICA*.

(a) Audit Section

According to the job description tendered as Exhibit 561, the key functions of the auditors were to conduct "complex" examinations of the financial institutions licenced under those statutes administered by CCA to determine if the statutes had been violated and bring violations to the attention of the senior auditor or Director of Audits through reports and supporting documentation.

In turn, the job description of the Director of Audits provided:

> This is a senior management position directing an Audit unit providing financial expertise and professional audit services to the various programs of the Department to ensure compliance with Acts, to keep the Minister and department informed of financial problems, to protect investors, and to recommend and implement action. [Exhibit 560]

In carrying out those duties with respect to FIC and AIC, members of the Audit Section believed they and CCA were responsible for protecting investors. Hutchison testified that he understood his job was to review the financial information on FIC and AIC on behalf of or from the point of view of investors. [26428] Romalo testified that his most important role as an auditor was to protect investors [26871] and that the Superintendent of Insurance and later Alberta Treasury acted as a watchdog for the public and investors. [26872] He also agreed that the investing public were entitled to rely on the proper and adequate administration of the *ICA* [26877] and that the fact of licencing FIC and AIC was an indication to the public that they complied with the *ICA*. Eldridge testified that he understood his job to be to report on the companies to the Superintendent to see if they were meeting the requirements of the *ICA*. [27722-3]

The Audit Section carried out desk and field examinations on a regular basis and performed the calculations required under s. 8. The results of such examinations and calculations were documented in reports which were reviewed and approved by the Director of Audits and thereafter forwarded to the Superintendent of Insurance, usually with a recommendation as to a course of action. The Audit Section also assisted in the drafting of the various compliance letters and reports prepared from time to time for the Deputy Minister or Minister. In the 1980s the Superintendents of Insurance were aware of the financial condition of FIC and AIC as determined by the Audit Section and the concerns and recommendations of the Audit Section with respect thereto.

The evidence tends to show that largely as a result of the examinations conducted by the Audit Section, the Superintendent by 1984 knew or ought to have known, *inter alia*, the following:

1. That there had been a significant shift in the type of product being sold by FIC and AIC from accumulation plans to single pay certificates;
2. That the Attorney General's office was of the opinion that single pay certificates were not "investment contracts" within the meaning of the *ICA*;
3. That as a result of the shift to single pay certificates, FIC and AIC were operating in a similar fashion to trust companies, but without CDIC coverage and without any similar capital base or capital ratio requirements;
4. That the Audit Section recommended that the *ICA* be amended to require a capital ratio;
5. That FIC and AIC were not adhering to the 25:1 ratio as they had agreed to do;
6. That FIC and AIC were not complying with the federal Department of Insurance mortgage guidelines which the companies had been advised would be applied to them;
7. That FIC and AIC were recording reserves at the approved maximum reserve accumulation rate (6%) rather than at the fixed rate on the face of the certificates (4%) resulting, according to the Audit Section, in a deficiency in reserves;
8. That FIC and AIC rarely satisfied the requirements of any of the s. 8 tests, according to the Audit Section;
9. That the Audit Section recommended the introduction of permanent capital to replace subordinated notes;
10. That a substantial portion of the mortgages held by FIC and AIC were in arrears and the companies had acquired a significant amount of real estate through foreclosure;

11. That FIC and AIC were experiencing recurring operating losses and were "playing accounting games" to make the books look better;

12. That the Audit Section believed appraisals were necessary in order to determine the value of the mortgages and real estate held by FIC and AIC;

13. That on the basis of the appraisals done, the Audit Section estimated the shortfall in the value of the mortgages and real estate held by FIC and AIC to be $72 million in May of 1984;

14. That in the opinion of the Audit Section, Transaction #1 was prejudicial to the interests of the contract holders;

15. That as at August of 1984 the Audit Section was of the opinion that FIC and AIC were virtually insolvent and were using new deposits to pay maturing liabilities;

16. That senior management had indicated that PGL was not prepared to inject capital into FIC and AIC; and,

17. That in the opinion of the Audit Section, FIC and AIC were entering into intercorporate transactions which were prejudicial to the interests of the contract holders.

Subsequently, the Superintendent also knew or ought to have known, *inter alia*:

18. That by late 1985 PGL was not in a position to inject capital into the companies and was itself in a precarious financial condition;

19. That by late 1985 the Audit Section was of the opinion that the companies' investment in AHL shares was prohibited under the *CBICA* and thus under the *ICA*;

20. That in 1985 and 1986 FIC and AIC were entering into other transactions which the Audit Section believed may be prohibited under the *ICA*; and,

21. That the 1985 audited financial statements of the companies were qualified.

Eldridge testified that once the Audit Section had rendered its reports and made its recommendations, it was the responsibility of the Superintendent to implement the recommendations or take action with respect to the companies. He said he got very little feedback from Saleh as to what was being done in respect of the Audit Section's reports. [27153-5] Romalo also testified to a sense of frustration with the slowness of action or inaction on the part of senior CCA officials in response to the Audit Section's work. [26825-6] Hutchison was more blunt:

> . . . what I did is during my employment there, I have indicated to the Minister through my auditors, that, you know, they are having serious problems, that something should be done about it. As you can see, for two years I wrote memos and banged my head against the wall trying to get the public aware of this, and nothing happened. So I took it on my own to advise certain clients to pull their money out. [26456]

To Hutchison's knowledge, the only things being done by CCA to ensure compliance with the *ICA* were meetings with and letters to the senior management of FIC and AIC. He was unaware of any deadlines ever being set for compliance, failing which their licences would be suspended or cancelled. [26423]

I find that the evidence tends to show that the members of the Audit Section acted with commendable zeal in carrying out their examination and reporting duties. The lack of action by the regulators can in no way be attributed to the conduct of the members of the Audit Section.

(b) Superintendent of Insurance

From 1973 the Superintendent of Insurance was responsible for the registration of investment contract companies, although from the summer of 1986 that function was in fact assumed by Alberta Treasury.

Saleh, the Superintendent as at the summer of 1984, believed his job was to protect the investing public. In a job description he prepared, Saleh described the position of Superintendent of Insurance as follows:

> The Superintendent of Insurance has direct responsibility for the regulation and supervision of both the insurance and the investment contract industries within the Province. In carrying out this responsibility he ensures proper application and enforcement of the Insurance Act and regulations and the Investment Contracts Act and regulations.
>
> The Superintendent is responsible for formulating and implementing policies plans and procedures in the following areas:
>
> • • • • •
>
> (b) Licensing of insurance corporations and registration of investment contract companies.
>
> (c) Financial examination of insurance corporations and investment contract companies to ensure that they are financially solvent and soundly managed and that they will be able to meet their obligations as they arise.
>
> (d) Disciplinary measures for non compliance with legislation including refusal, suspension or cancellation of licence where required. [Exhibit 576 at 9]

At the same time, Saleh summarized his dual role of Executive Director of Financial Institutions and Superintendent of Insurance as follows:

> Responsible for the overall regulation and supervision of the Province's financial institutions having total assets of approximately $8. Billion. The position formulates, implements and administers Divisional Policy and procedures designed to maintain confidence in and the stability of financial institutions and to protect and safeguard consumers' interests. [Exhibit 576 at 6]

Saleh testified that as Superintendent of Insurance he felt his duty was to protect the interests of the investors and the public. [29369-70] He took full responsibility for the promotional materials approved by his office and saw his role in approving such materials as a watchdog to ensure that the public understood the product and were given accurate information. [29636]

One of the methods available to the Superintendent to protect the interests of the public and contract holders was to ensure that FIC and AIC complied with the requirements of the *ICA*, in particular the financial requirements of s. 8.

It was evident in argument that counsel disagreed as to the proper interpretation of s. 8 of the *ICA*. That section mandates that no company shall be registered as an issuer unless each of the s. 8 tests are met. It was submitted in argument that s. 8 applied only to new registrants or only at the time of renewal of registration.

I do not accept such submissions. The word "registered" as used in s. 8 refers to the condition of being registered, which continues beyond the act of initial registration or renewal of registration. It is difficult to see how s. 8 could only apply to new registrants, since such companies would not have the reserves required by s. 8(d), because they would not then have sold any investment contracts. I find that the requirements of s. 8 apply to issuers at all times and that failure to satisfy one or more of the 3 tests means that a company can no longer be registered under the *ICA*.

It is true that other provisions of the *ICA*, namely ss. 10 and 37, appear to be inconsistent with the mandatory nature of s. 8. Those sections grant the Superintendent a discretion which would appear to encompass a situation where an issuer does not comply with any one or more of the s. 8 tests. Pursuant to s. 10, the Superintendent "may" suspend or cancel registration on any grounds that would justify refusal to grant registration or renewal thereof, or when it appears to him from an investigation, inspection or valuation that an issuer will be unable to provide for the payment of its investment contracts at maturity. Pursuant to s. 37, the Superintendent "may" make a Special Report to the Minister when he is satisfied, *inter alia*, that an issuer has failed to satisfy any one or more of the s. 8 tests. Use of the permissive "may" can be taken to imply that the Superintendent has a discretion to do nothing at all in such a case, which would conflict with the purpose of the *ICA*.

Section 31, however, confers no such discretion. It states that a registered issuer "shall not" issue investment contracts for sale in Alberta unless the issuer maintains the reserves specified in s. 30 [and required by s. 8(d)] and the deposit(s) of assets specified in s. 8(c). The evidence tends to show that this provision was largely overlooked or ignored in the regulation of FIC and AIC.

While acknowledging that the desk and annual examinations were for the purpose of monitoring the companies' compliance with the s. 8 tests, Saleh testified that he understood s. 8 to be applicable to the initial registration of new companies, with s. 7 applying to renewals. He said s. 7 was discretionary and that in any event a decision to cancel or suspend licences had to be made at the ministerial level. That was his understanding from discussions with the Deputy Minister and Minister. Saleh also said he could not threaten to cancel or suspend their licences without approval from the Minister or Deputy Minister, since he would lose his credibility by threatening and then failing to act. [29180-6]

Saleh testified as follows:

Q Now, sir, who told you that you didn't have the authority to pull the licences?

A Not in these words, sir. Not in these words. I asked for direction from the Minister. Here is the serious situation. I want an independent examiner in order to determine whether we continue to licence these people or not.

I didn't go to the Minister and say, I want to pull the licence now, and she said, no, don't pull the licence. That didn't happen.

Q Well, sir, did anyone ever tell you that you didn't have authority to pull the licences?

A That's right, that was the understanding of the policy in general; that such a decision at that magnitude has to be made with the approval of the Minister.

Q How did you come to that understanding?

A From my discussions with the Minister and the Deputy Minister.

Q So they told you that?

A They told me that, yes.

Q They told you that you didn't have the authority to pull the licences?

A Not in these words, sir. I don't know the exact words how it happened, but that's the bulk of the discussion.

I can't tell you exactly what the Minister told me in her words.

Q Well, sir, I'm going to be called upon, I understand, to examine Mr. Martin next week.

A That's right.

Q What I want to know is specifically this: Did Mr. Barry Martin ever expressly tell you that you did not have the authority to pull the licences?

A It could have come in our discussion that we shouldn't pull the licence, we shouldn't put the company down now, we should wait. That's how it came.

Q So he didn't tell you that?

A He told me that in different words, not in your words.

Q He told you that you should work with the company?

A That's right.

Q And put pressure on the company?

A That's right.

Q But allow them to continue to operate?

A That's right.

Q Did the Minister, that is, did Mrs. Connie Osterman ever tell you that you did not have the authority to pull the licences?

A The same way like happened with the Deputy Minister. We were the three of us sitting and discussing these matters.

Q Same conversations?

A That's correct.

Q She told you to keep putting pressure on the companies?

A Both of them.

Q To keep making demands for capital?

A That's right.

Q But to allow them to continue to operate and continue to sell?

A That's correct.

Q Did they tell you, sir, that they thought it was better to let the companies continue in operation than to pull the licences?

A Well, under these circumstances that it might, you know, affect the other financial institutions because of the depression in the real estate market, because of all these things.

Q Did you feel, sir, that in allowing the companies to continue to keep their licences, you were protecting the investment contract holders?

A In allowing — would you please repeat your question?

Q In allowing the companies to keep their licences, did you feel you were protecting the investment contract holders?

A I personally?

Q Yes, sir.

A I don't think that that was enough protection because what I wanted, I wanted to act on that, but first I wanted an independent examination to tell me exactly where do I stand. So I was in a hazy position. [30047-50]

Martin's evidence was similar:

THE INSPECTOR:

You say Mr. Saleh was exercising discretion. You mean he had the discretion under the Act which was exercised by you and the Minister?

A Yes, I understand —

THE INSPECTOR:

Did he do it, or were you and the Minister saying, you do it?

A Well, we used to discuss — Mr. Saleh and the Minister and I used to meet regularly in, what I used earlier, in a collegial sort of way, and we would discuss matters back and forth. Finally a conclusion would be reached, and that would be the decision that Mr. Saleh would take.

THE INSPECTOR:

Yes, right. But it was after consultation by him with you and the Minister?

A That was the usual practice.

THE INSPECTOR:

Let's give them some time, and then he would exercise his discretion based on that instruction?

A The question of time was always a factor, to continue to extend time to them to see if they could do a work-out.

THE INSPECTOR:

Therefore, use your discretion to keep them licenced?

A That's correct, sir.

Q MR. WITTMANN: I think the thrust of Mr. Saleh's evidence goes further, in that he says he would never exercise a threat to cancel or suspend to licence without a direction from you or the Minister.

A That's correct.

Q Do you agree with that?

A Pardon?

Q Do you agree with that?

A Absolutely.

Q That seemed to be perfectly clear on this. That's in the sense that it's your decision, not his?

A I think even further, counsel, I think it's the Minister's decision.

Q Fair enough, but as opposed to Mr. Saleh's decision?

A That's correct.

Q That's how it worked in practice?

A That's how it would work in practice, yes. [30225-6]

It is clear that by 1984 Saleh was concerned about FIC and AIC, as evidenced by his requests for further appraisals and engagement of an independent consultant to do an assessment of the companies. He testified:

> Q Yes. I take it at that time, by the summer of 1984, Mr. Saleh, that you had determined in your own mind — and I am trying to distinguish that from policy or what someone was directing you — that there was a state of affairs in the company which was prejudicial to the contract holders?
>
> A Yes. [29598-9]

In the fall of 1984, Saleh asked Bercov to provide a legal opinion as to the authority of the Superintendent under the *ICA* to deal with the capital impairment of FIC and AIC. Bercov replied in a letter dated October 24, 1984. [Exhibit 576 at 752] He advised Saleh that the Superintendent had a discretion under ss. 10, 37 and 40 and that while the Superintendent had no express power to order an injection of capital, he could indicate to the companies that unless an appropriate injection of capital was made he would exercise that discretion.

Saleh did not suspend or cancel the companies' licences, nor make a Special Report. I take from his evidence that he did not do so because of his understanding, from discussions with Martin and Osterman, that he was to continue to work with FIC and AIC and give them time to attempt to work out their problems.

With respect to s. 31, Saleh testified that he understood the section prohibited the sale of investment contracts in Alberta unless the deposit requirements of s. 8(c) and the reserve requirements of s. 30 were met. Saleh agreed that according to the Audit Section's calculations FIC and AIC did not meet these requirements, certainly from 1984 onwards, but said they were permitted to continue selling their products because of the dispute with them over whether they met the requirements and because of CCA policy. [29507-9]

As mentioned, Saleh testified that after receipt of the qualified 1985 audited financial statements in 1986 he believed there could no longer be any valid dispute over whether FIC and AIC met the requirements of the *ICA*. He testified as follows:

> Q MR. GREENAN: So what I'm saying, though, sir, is at that point, there's really little argument, as far as you're concerned. You, at that point, are still faced with the statutory requirements and it states under Section 31, the companies shall not issue investment contracts for sale in Alberta if they don't meet the deposit requirement?
>
> A That's correct, as about July '86.
>
> Q So, indeed, in effect, every day you're allowing them to sell investment contracts to the public, they're doing so on the basis that you know they don't meet the test that they're required to meet under Section 31?
>
> A Yes, but this was referred to my Minister.
>
> Q All right, so —
>
> A We're talking about July '86 when the Treasury Department were the actual authority in that, not me.
>
> Q In fairness to you, sir, by that point, it was referred to the Minister. You're not making the decision, the Minister is making the decision?
>
> A Correct. [29511-2]

The evidence tends to show that Saleh did not fulfill his duty to administer and enforce compliance with the *ICA*. It would be unrealistic to expect, however, that Saleh would have suspended or cancelled the companies' licences without the support and approval of the Minister. He did not receive

that support or approval from Osterman. Instead, he was directed to work with FIC and AIC to see if their problems could be worked out, although neither the companies nor CCA had a workout plan. Salch had no power to threaten to suspend or cancel the companies' licences. In effect, he was not allowed to enforce the *ICA*. The most he could do was make requests of FIC and AIC, such as for the injection of additional capital, without having the means to take action if they refused. He was put in an impossible situation. In all of the circumstances, the evidence tends to show that his conduct in this regard was neither dishonest or fraudulent.

I feel compelled, however, to comment on the 1984 change in the wording of the top left paragraph on the back of the contract application form. The change was made at Salch's instance, without direction from Martin or Osterman. I find that the change in the wording was so technical and subtle as to be no change at all and did not remedy or have any effect on the representation being made to investors and the public as to the assets of the companies and their ability to pay their certificate liabilities.

Salch knew that the representation being made to investors in FIC and AIC was that assets on deposit were equal to 100% of certificate liabilities. He knew that the representation was or could be relied on by investors and he knew it to be false. The evidence tends to show that his conduct in requiring the change in wording was dishonest. In so finding, I am not unmindful that the failure to regulate and require compliance with the *ICA* was the result of a policy pursued by the Minister, Osterman. However, even though the policy made the regulation of FIC and AIC difficult or even impossible, it did not allow him to approve a statement known by him to be false.

(c) Minister of Consumer and Corporate Affairs

As stated earlier, the Minister was charged with the administration of the *ICA* by virtue of section 1(e) thereof.

When asked for whose benefit she believed she was administering the *ICA*, Osterman's evidence was as follows:

> Q Quite. So what did you understand the government's involvement with investment contracts to be?
>
> A To spell out the conditions under which the companies would operate.
>
> Q And as you understood it, for whose benefit was the government involved in investment contracts?
>
> A I would say that it would meet a public interest, overall. That there would be a public interest in having such legislation, in order for companies to operate. I can't say what would have been in the minds of the framers of the legislation many years ago, but obviously they believed it was in the public interest to have such opportunities available for companies, and for investors.
>
> Q I, of course, haven't troubled you with trying to see what people did years ago. I just am interested in your point of view. And in your point of view, the government's involvement with investment contracts was for whose benefit?
>
> A I hadn't thought about it as a benefit, so much as just that we were responsible for the legislation that was there. When you —
>
> Q You don't mean to conclude that you don't — that you think the government gets involved in things without a benefit in mind? You are not asking us to conclude that?
>
> A You are asking me a question that I hadn't considered in terms of legislation that I inherited. I certainly consider, in terms of legislation that I would propose, whether amendments or otherwise.
>
> Q Well, let's deal with the legislation that you were administering, all right?
>
> A M-hm, yes.

Q Did you have in mind for whose benefit you were administering the legislation? Perhaps not, perhaps the answer is no, I did not think about it?

A I did not think about it. The legislation was there, and to be maintained. [31469-70]

Osterman testified that she understood that the *ICA* contained certain capital requirements and she relied on Saleh and Martin to tell her whether FIC and AIC met those requirements. [30947] When asked about s. 31 of the *ICA*, she testified that she did not understand that FIC and AIC had to satisfy the reserve requirements in order to sell investment contracts. [31235-6]

Osterman agreed with Saleh and Martin that no threat of suspension or cancellation of the companies' licences would be made without her approval. [30950] In fact, she said:

Q The practicalities of it were that Mr. Saleh couldn't make any decision of significance regarding AIC and FIC unless he had your concurrence and the concurrence of Mr. Martin?

A Precisely. I would want to know that he was recommending and going to do a specific action that might precipitate a further action by us and by government overall. [31232]

In 1984, Saleh brought two significant matters with respect to FIC and AIC to Osterman for her approval; the obtaining of further appraisals and the engagement of an independent consultant. In his view, they were necessary in order to resolve the dispute with the companies as to whether they were in compliance with the *ICA*. Osterman refused both requests.

With respect to appraisals, she testified:

Q Let's just analyze that for one moment. Is there any suggestion that appraisals were avoided because of what they might reveal or opine?

A No.

THE INSPECTOR:

In fact you knew what they would show?

A Precisely. Precisely.

Q MR. WITTMANN: You didn't know how much in terms of money measurement they would show, did you?

A No, I did not.

Q And that measurement was necessary to determine the capital deficiency in an investment contract company. You knew that, didn't you?

A Yes.

Q So how much is the question?

A How much is the question, that's right, and would there continue to be the discussion between department officials and the company and their outside auditors about who was right.

Q Fair enough. So to get the answer to the question, the universal appraisal method was not used, it was called off, and I want to know what the alternative was as put forward by you or you and Martin, if there was one?

A Well, I expected that our officials would be working with the company officials and outside auditors to come to some consensus about the situation.

Q And was there any machinery or method put in place or discussed in the event that there would be no agreement?

A Not at that time. [30957-8]

• • • • •

THE INSPECTOR:

So then I understand that, in fact, there was no attempt to resolve this, what you had decided was the policy of your department was to let the companies go on until you determined that the real estate market came back and appraisals could help? Would that be fair?

A That's right. I wouldn't necessarily say "came back", but that the appraisals could be more reliable. [31112-3]

• • • • •

THE INSPECTOR:

I don't think it is clear. You did understand then that the only method that the Superintendent had of determining the value of property, when he didn't agree with someone else's, was to get an appraisal?

A Yes.

THE INSPECTOR:

He had no other alternatives according to the statute?

A That's right.

THE INSPECTOR:

So that if he couldn't get those kind of appraisals you knew he couldn't put a value on it at all, didn't you?

A That's right. [31339]

With respect to an independent consultant, Osterman testified:

Q This goes to Mr. Martin's evidence is that it was a factor in the deliberations as to whether or not to bring in an outside firm of chartered accountants for an overall assessment, that by doing so that would necessarily focus public attention on the investigation or assessment with the fear that that may cause a run?

A That's right, and in my view it would have been premature because I had not formulated options.

Q Okay. But premature or not, was the idea of focusing public attention part of the reason why you didn't do it at this time?

A I think we're both saying the same thing.

Q I'm not saying anything. I'm just trying to ask you —

A I thought you were.

Q Well, pardon me. I'm asking you whether that was part of the consideration in the decision not to call in outside professional chartered accountants, the fact that that may draw attention to this institution?

A Partially.

Q So it could — it was a factor?

A It could be, yes. I won't say could be, it was. There was some consideration, and it was to do with timing. [30997-8]

And further:

> Q Did you in any way — I put to you you did in some way communicate to Mr. Saleh, and incidentally, to Mr. Martin, that through 1984, 1985 and into 1986, Saleh was not to obtain an independent consultant because to do so would focus the attention of the public on these companies. You communicated that to him somehow; is that right?
>
> A Yes, very, very possible. [31515]

I find that the evidence tends to show that further appraisals were not done and an independent consultant was not engaged at the direction of Osterman, and in furtherance of a policy within CCA to give FIC and AIC time to work out their problems. Osterman described the policy, which I find was her policy, derived from her perception of a general Government desire to preserve Alberta-based financial institutions and public confidence in them, as follows:

> Q Now, there's also been evidence given, and I believe it starts in about this time frame, that Mr. Martin's perception of the government policy was to allow the companies time, that phrase has been used. It's been used in the context of time to work it out, but working it out meaning no government assistance, just the passage of time, perhaps the real estate market will come back. I think I'm fairly summarizing the evidence given. We're interested in whether you, verbally or in writing, for that matter, which we haven't seen, ever enunciated such a policy directive to any of your staff?
>
> A No.
>
> Q Was there such a policy?
>
> A Oh, I think that our policy really addressed the situation institution by institution. The overall objective of government clearly has been over time for many, many years and our administration, as I understand it, really didn't operate differently and I didn't sense that it was different at the time that I was there, and that was to try to develop and maintain good financial institutions in the province.
>
> Q Was the preservation of an Alberta financial institution then an objective, a policy objective?
>
> A Certainly if government could play a role and it was viewed that — I was working on a decision with respect to the credit unions and got that support from my colleagues sometime in 1984, and so I sensed that given a good understanding and an institution that was of critical importance to the province and, over the longer haul viable, that we would attempt to work with such an institution that we hoped would benefit all Albertans. . . .
>
> Q But with an individual institution such as the investment contract companies, when Saleh and Martin tell us that what they were getting from you was basically give them some time to work it out, that policy, if it did come from you, was specific to those two companies?
>
> A Certainly in terms of how we viewed their real estate problem, I believe time was required to see our economy settle and where it would settle, because the harm had already been done.
>
> Q When you say settle, you mean stay where it was or stabilize, stay the same for a while?
>
> A To whatever extent it settled out, it was going to be at a level that we couldn't pre determine right at that time. [31011-13]

And further:

> Q That's exactly what I am interested in. What was the policy or what was the directive with respect to these two companies, AIC and FIC, in terms of giving them time?
>
> A The time related to the stabilization in the Alberta economy and I could not predict, while looking ahead things looked somewhat better, I could not predict where the economy would be when we — when it was stabilized in our view.
>
> Q So you were going to give them time on the expectation that there would be a stabilization of the Alberta economy; is that correct?
>
> A That's right. I felt that the information that then would come forward on the companies would be more accurate. [31265]

Martin described the policy as follows:

> Q And indeed, from '84 onward, you were aware that the companies didn't have the reserves and didn't have the deposits?
>
> A I was aware from information received from our auditors and from Mr. Saleh that there were deficiencies.
>
> Q So in any event somewhere the decision was made that regardless that they didn't meet the requirements of Section 31, the companies would be allowed to stay on in business?
>
> A That's correct.
>
> Q That was part of the policy?
>
> A That's correct.
>
> Q In other words, the policy, in effect, was even though under the Investment Contracts Act they were prohibited from issuing investment contracts, we take a larger view of things, the policy says, let the companies carry on and sell the contracts?
>
> A Yes, I would agree with your characterization of the larger view.
>
> Q That's the type of discussion, as well, that would have come up in discussions with the Minister and the task force?
>
> A To the best of my knowledge, counsel. [30658-9]

Osterman testified that in her opinion the Alberta economy had stabilized or settled out to some extent in 1985. [31013-4] No action was taken by CCA at that time to either obtain appraisals or engage an independent consultant, notwithstanding Saleh's advice in November, 1985 that the valuation of mortgages and real estate problem had not been resolved, and her own growing concern about the companies' style of operation. [31085-6]

In fact, Osterman testified that she never had a plan of action with respect to FIC and AIC while she was Minister. [31117] She said she did not prepare a plan in 1984 because she did not feel it was necessary at the time. [31370] She testified that in late 1985 she felt that "the timing was fast approaching for development of some options for these two companies", however, that was not done due to a hiatus in administration as the result of a by-election called to enable Getty to acquire a seat in the Legislature. [31117-8; 31227-8] According to Osterman, the hiatus continued through December and January, and in February of 1986 she left the portfolio. [31231]

Martin confirmed the lack of a plan for FIC and AIC within CCA as follows:

> Q I will go over it once more. There was no such plan for the investment contract companies at any time was there?
>
> A There was no such plan.

Q All right. To develop such plans that you spent a great deal of your time working on, you would have to receive an instruction?

A That's right, that's right.

Q The instruction, in your case, would come from the Minister?

A That's right.

Q The Minister would receive the authority to work on that plan at a Cabinet level, so far as you knew?

A I can only assume that, sir.

Q All right.

A But there was no such plan. [30184]

• • • • •

THE INSPECTOR:

Yes. I mean, if we wait three years or four years for the real estate to come back to 1981 levels, can these companies survive anyway? There is no —

A We had not, to the best of my knowledge, sir, done a projection along the lines that you are suggesting.

THE INSPECTOR:

The only thing you did was, it has gone down, let's keep them going and see if by some —

A If Alberta turns around it will come back up.

THE INSPECTOR:

And with a lot of hope and prayer it will get back even?

A A hell of a lot — excuse me, a great deal of hope and prayer, sir. [30415-6]

• • • • •

Q The basis for this strategy, this policy of giving the companies time, was all predicated upon, to use your expression, a great deal of hope and prayer, correct?

A Those were my words, sir.

Q The hope was that there would be a turnaround in the economy that somehow might have an impact on improving the companies' positions?

A Yes, sir, yes.

Q Quite frankly, sir, it was a gamble, wasn't it?

A I guess it was, sir. [30653-4]

• • • • •

Q MR. DAVIDSON: Did you understand, sir, that you were taking a risk with other people's money?

A I understood that the Government of Alberta was taking a risk in permitting these companies to continue under the circumstances.

Q Did you understand they were taking a risk with other people's money?

A I understood that other people's monies were involved in this company.

Q Only other people's money?

A Pardon?

Q Only other people's money?

A Yes, the investors' money, yes. [30791]

With respect to the consideration given to prospective investors in 1984 and 1985 in adopting the policy described above, Osterman testified as follows:

THE INSPECTOR:

But the question is, that I asked you, was what consideration was given to those people putting money into companies that your department said were offside and the real estate values were down? What protection were they to get from that investment? What was your consideration to them?

A My consideration was the overall public good which I thought benefited them as well.

THE INSPECTOR:

I don't follow that. Perhaps you could explain to me how they're putting money into these companies did something for their good?

A They're putting their money into these companies did not necessarily, except for the interest rate that they were earning, was not necessarily, if you look down the road at eventually what happened, in their best interests. But, Mr. Code, this was the very — I guess the position that we were in in trying to judge what was going to be best in the longer term. And I have no explanation other than that.

THE INSPECTOR:

And they would then be carrying out the government policy by putting money into something that could have been taken down?

A Yes, if you believed that, in fact, you had significant evidence to take them down.

THE INSPECTOR:

Your department believed that, didn't they?

A Yes, they did.

Q MR. WITTMANN: Mrs. Osterman, put in another way, the policy that Mr. Saleh and Mr. Martin described, that is, workout, give them time, which you've indicated came from you, was developed with the knowledge that if your department auditors were correct, at least the new people coming — making investments in these companies could be harmed, individuals? That's your dilemma, isn't it?

A That's my dilemma, and certainly in the back of my mind I would have had some thoughts about what the future would bring had conditions stayed precisely the same. I think it's fair to say that I believed that the investors at the time would be greatly harmed, in fact the whole province would be, if we tried to publicly handle these two companies, which potentially was what would have happened had we got into the full-blown scenario of developing a plan for them, or sending in outside experts in the company to determine a number of matters. My view of the credit union system was so fragile that more publicity about financial institutions would have been incredibly negative, and indirectly impact these investors. [31115-7]

With respect to whether FIC and AIC were being given time to work out their problems while in breach of the *ICA*, Osterman testified as follows:

Q Well, was there any discussion about the idea that with the capital impairment or deficiency, the contract companies were in breach of the statute, violating the law?

A I don't know — it was a very gray area in terms of the discussions about what pertained in terms of the ongoing ability for the companies to operate, and because I felt that there had not been clarification of the company's position in terms of capital impairment, I did not pursue questions in that regard.

Q There was never any occasion to your memory, then, when a discussion occurred about giving the companies time in the context of, while, you are giving them time, they are in breach of the statute?

A No. I believe that that would be described by the regulator, if necessary. [31083-4]

Osterman testified that "it was my understanding that in terms of regulation, what was necessary would be done" [31478] and that "I left the decisions to the regulators with respect to what they must do to properly enforce the legislation". [31500] She testified that at no time did she conclude in her own mind that FIC and AIC were operating contrary to the law. [31493]

With respect to Salch, she said as follows:

THE INSPECTOR:

I don't understand that. Sorry, you will have to go into that a little more. I mean, Mr. Salch told you that as far as he is concerned they didn't meet the capital requirements.

A But it hadn't been totally clarified, and he did not say that the situation that they were in meant that in a statutory way that they had to have their licences cancelled. That was not communicated to me. I guess that is basically what I am saying.

THE INSPECTOR:

You had familiarity with the Act, but you relied on Mr. Salch to tell you what the law was in relation to this and you are saying he just never said that they —

A That's right. [31211]

With respect to Martin, she testified as follows:

Q Now, I say again, I have to tell you in fairness that Mr. Martin has testified here that he was aware, in his judgment, that at least at some times these companies were not in compliance with the Act. Do you say that your Minister didn't tell you that or that he did tell you that? Your Deputy Minister, rather?

A He would have expressed to me the concern that that was a potential and that he would need an opinion on it. I believe there were several opinions sought about that — about various areas. The Transaction Number I being one of those areas.

Q Mrs. Osterman, my question to you is, do you say that the Deputy Minister told you that he was of the view that these companies were operating contrary to the Act or didn't he?

A He may have expressed it that way, otherwise he wouldn't have been looking for opinion to substantiate or not.

Q I don't know about the otherwise. I just want to know what you say. Did your Deputy Minister tell you of his view, which he says here on oath that he had, that the companies were, at least some of the time, operating contrary to the Act? Did he tell you that or not tell you that or you don't know if he told you that or something else?

A I am sure he would have expressed some — he would have raised the matter somehow. You are being — you are making an exact statement and saying did he tell you that or not.

Q Mrs. Osterman, I am not — I don't really care if he said it in those words or if he used semaphore or how he said it?

A Okay.

> Q Did he let you know in writing, in talking through your executive assistant, by a memo, hand signals, innuendo, a wink, a nudge, I don't care how, that he was of the view that these companies at some of the time at least were operating contrary to the Act. Did your Deputy Minister do that?
>
> A No. He would have used the term "may".
>
> Q How do you know that, Mrs. Osterman?
>
> A Because I recall that he was not — I did not believe him to communicate that he was firm in his judgment, therefore we needed opinions.
>
> Q Now, are you saying to us that he did not do that or wouldn't have because you know his manner of speaking? I don't understand your answer.
>
> A I am saying that he, in expression about an opinion, when giving an opinion, ordinarily he would say, they may be. And I am talking now — or I am speaking now about generally in his communication to me about areas that require an opinion, and I don't believe that he was wanting to express a legal opinion, so he would usually use may.
>
> Q His testimony here, so you are aware, under oath was, I was aware; I was aware that the companies were in non-compliance with the Act. Now, did he say that to you?
>
> A No. [31494-6]

I do not entirely accept this evidence. I find that Saleh and Martin told Osterman that according to the calculations of the Audit Section, which they accepted as accurate, FIC and AIC did not meet the requirements of the *ICA*. Given the position of the companies that they were not in breach of the *ICA*, it may be that Saleh and Martin were unable to say unequivocally that FIC and AIC were operating contrary to law in 1984, 1985 and the beginning of 1986. The evidence tends to show, however, that Osterman would not allow the necessary steps to be taken to confirm whether that was the case.

When Darwish tried to alert Osterman to what he believed was a very serious situation in 1984, she refused to read his memorandum and forced him out of CCA into early retirement. Having been told that in the opinion of the Audit Section, with which her Superintendent and Deputy Minister agreed, FIC and AIC did not satisfy the financial requirements of the *ICA*, and having been advised by her Superintendent that appraisals or the engagement of an independent consultant or both were necessary to confirm whether there was non-compliance, and if so to what extent, Osterman refused to do either and chose not to take any action at all. Indeed, she testified that she knew that the results of appraisals, if done, would not be favourable to the companies. The evidence tends to show that she knew the companies did not meet the requirements of the *ICA*. She took a conscious decision to simply wait and hope for an improvement in the economy, in accordance with her policy of attempting to preserve Alberta-based financial institutions, a consideration irrelevant to the purpose and objects of the *ICA*. In the meantime, she prepared no plan of action to deal with the companies.

The effective result of Osterman's conduct was that administration and enforcement of the *ICA* and regulation of FIC and AIC were suspended. This was in breach of her public duty to carry out the purpose and objects of the *ICA*.

This suspension was not made known to investors and the public. FIC and AIC continued to be licenced and were permitted by the regulators to state on their contract application forms that they were registered under the *ICA* and that the *ICA* required assets on deposit to equal 100% of certificate liabilities.

Osterman was prepared to allow the public to continue to invest in FIC and AIC when she had no idea whether the companies would be able to honour maturing obligations, because of what she perceived to be a greater public good. In the end, it was the investors who bore the risks of her decision and her policy and her hope that economic conditions would improve.

Osterman's conduct would best be considered in the context of negligence or misconduct in the carrying out of a public duty, matters which I am not empowered to consider. Pursuant to my mandate, I must consider whether her conduct amounts to fraud or dishonesty as those terms are defined in this Report. The law with respect to fraud and dishonesty is outlined in Appendix 1.

The evidence tends to show that Osterman's conduct was not fraudulent or dishonest for two reasons. First, the decision of the Privy Council in the case of *Yuen Kun Yeu et al.* v. *Attorney General of Hong Kong* referred to in Appendix 5 casts some doubt on whether the supervisory and licencing requirements of the *ICA* would amount to a representation to investors that FIC and AIC were in compliance with the *ICA*. Although I am of the view that the *Yuen Kun Yeu* case is distinguishable on its facts, and that the *ICA* is substantially different than the ordinance under consideration there, and is for the benefit of present and future investors, I cannot say with certainty that the law would recognize the continued licencing of FIC and AIC as a representation by those charged with administration of the *ICA* that the companies met the statutory requirements.

Second, the evidence tends to show that Osterman was preoccupied with the larger question of the status of the financial industry in Alberta and especially the credit unions, concerning the greater public good, to the exclusion of the particular statutory duties delegated to her under the *ICA* or delegated to others and effectively usurped by her. The evidence tends to show that Osterman failed to discharge her duty to administer and enforce the *ICA*. She refused to act on the specific recommendations coming up from her subordinates and insisted on treating FIC and AIC as part of the larger question. The evidence tends to show that such conduct was naive and misguided. My mandate is to report on evidence tending to show fraud or dishonesty. The evidence tends to show that Osterman's conduct in these circumstances does not fit within those terms because although she was neglectful, misguided or even reckless, her intentions were not in any way dishonest.

According to Ryan, new term certificates totalling $328,602,585.58 were purchased by investors after December 31, 1983 and remained outstanding as at June 30, 1987. Of the term certificates in existence as at December 31, 1983, $60,244,532.86 worth were rolled over during the period January 1, 1984 to June 30, 1987 and remained outstanding as at June 30, 1987. [Exhibit 636] Had the companies' licences been suspended or cancelled in 1984, not all of this money would have been invested and the loss to investors would not have been as great; just how much smaller I am unable to say.

(d) Task Forces and Priorities Committee

Hyndman referred to Government policy in 1984 and 1985 as follows:

> . . . the policy was to take whatever steps could be, to try to, firstly, hold or ensure that the confidence of business and consumers didn't drop too far, and also to suggest that there were some basic long-term strengths in the Alberta economy, and that everyone should be aware of that, and that we had a future. [33843]

He could neither confirm nor deny whether CCA had an internal policy to defer action on FIC and AIC for any reason. [33819]

I accept the evidence of Hyndman, McPherson and Osterman to the effect that both task forces and the Priorities Committee had little specific knowledge of the problems with FIC and AIC in 1984 and 1985. They would not become involved unless and until the Minister of CCA brought forward a recommendation and plan of action. That never happened.

(e) Alberta Treasury

The evidence shows that shortly after the transfer of administration, Alberta Treasury was in receipt of the interim and final 1985 annual examination reports on FIC and AIC, prepared by the Audit Section within CCA. Notwithstanding the results of these reports, the lengthy experience of the Audit Section in examining FIC and AIC and the concerns expressed by the British Columbia

regulators, Johnston chose not to take any action on the basis thereof. Instead, the Loans and Guarantees section within Alberta Treasury commenced its own assessment of the companies. The evidence tends to show that it was not until late 1986, when Loans and Guarantees and the British Columbia regulators also began recommending the engagement of an independent consultant, that that was done.

In the meantime, investors continued to put money into the companies when Alberta Treasury had no idea whether they would be able to repay it. Johnston acknowledged that in his testimony, as follows:

> Q Well, again then during June '86, July, August, September and on and on it goes, and perhaps we are not disagreeing with one another but as this time is passing and people, to your knowledge, are putting their money in these companies, you didn't know whether they were ever going to get it back or not? You cared, I take it, whether they would get it back?
>
> A I cared and I hoped we would get the money back.
>
> Q You cared and you hoped?
>
> A But could not judge. [33257-8]

When asked whether he believed Alberta Treasury acted quickly enough after assuming jurisdiction over FIC and AIC, Johnston testified that the course of action adopted was appropriate to ensure that there was a solid basis for making a decision or recommendation to Cabinet, since there was a lot at stake. [33153-5] He was not prepared to make a recommendation on the basis of the examinations of CCA over the previous 13 years for at least two reasons: first, the economic situation in Alberta was different than it had been earlier, and that impacted on the quality of the assets; secondly, the emergence of the intercorporate transactions in 1985, 1986 and 1987 affected the quality of the assets and Treasury required more information about them. [33231-4]

Notwithstanding Johnston's evidence as to why Treasury did not take action in the summer of 1986, I have difficulty understanding this, given the findings of the Audit Section from its 1985 annual examinations and its knowledge from earlier examinations, and in light of the 1985 qualified audited financial statements received in May, 1986. It appears to me that there could be no valid dispute at that time as to whether FIC and AIC satisfied the financial requirements of the *ICA*.

In any event, I have difficulty understanding why the engagement of an independent consultant was delayed until the end of 1986, and by then I question whether it was necessary to engage a consultant at all, given the opinion of Loans and Guarantees in November of 1986 that FIC was effectively insolvent. Had Alberta Treasury acted sooner, it is likely that the losses to investors would have been less, although it is impossible to quantify the amount. The value of the real estate held by FIC and AIC may have been greater as well, resulting in a higher realization for investors. Johnston's evidence was that Treasury believed the market value of real estate declined dramatically in 1986 and 1987. [33388]

Notwithstanding these comments I find that the evidence does not tend to show the conduct of the Provincial Treasurer or officials within Alberta Treasury to be either fraudulent or dishonest.

3. Effect of the Administration of the Investment Contracts Act on the Sales Practices of FIC and AIC

The effect of the inability and unwillingness of the regulators to address the problems of FIC and AIC may be seen here as well.

I have already found that single pay certificates are not investment contracts as defined in the *ICA*. It follows that the regulators had no authority to approve the contract forms or materials used by FIC and AIC with respect to those certificates.

Notwithstanding this, the regulators approved contract forms and permitted the companies to state that they were registered under the *ICA* and that the *ICA* required assets on deposit equal to 100% of liabilities. The evidence tends to show that such wording was the single most effective sales tool used by salesmen to sell FIC and AIC certificates. The evidence tends to show that CCA allowed the companies to make these representations when it knew that FIC and AIC did not have such assets and no steps were being taken to enforce compliance with the *ICA*. The only action taken was a wording change suggested by the Superintendent in 1984 which did nothing to correct the misrepresentation. Alberta Treasury took no steps to have the wording changed upon its assumption of jurisdiction over FIC and AIC even though it knew or ought to have known that it was untrue, and the misrepresentations continued to be made until June 30, 1987.

The evidence also tends to show that CCA was aware of sales practices which it considered to be misleading, yet a proposed investigation in 1984 was called off at the direction of the Deputy Minister for fear of drawing attention to the companies and no action was taken to stop such practices.

The evidence also tends to show that CCA was aware that the Annual Reports, which had not been submitted to the Superintendent for approval, were or could be used as a sales tool. Alberta Treasury was of the view that the 1985 Annual Review was misleading and should have been aware that it could be used as a sales tool. No steps were taken by the regulators to require approval of such materials or prevent their use in promotion of FIC and AIC.

Appendix D.

Owen Report (Overview)

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Province of British Columbia

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September, 1989

Overview

Approximately 17,000 British Columbians held investment contracts in AIC and FIC with a total value in principal and interest of more than $160 million on the day the licences of these companies to conduct business in B.C. were cancelled on July 2, 1987. Current estimates are that they will recover between 55% and 60% of this total value after liquidation and distribution of the AIC and FIC assets. In addition, the Alberta government has stated its intention to provide compensation sufficient to bring this recovery up to 75% for investment contract purchasers from all provinces, apparently on the condition that they agree to hold any other contribution received in trust for the benefit of purchasers from all provinces as well.

The B.C. investors, through individual complaints and through an association formed to represent their interests, have complained to the B.C. Ombudsman's office that their loss would not have occurred but for the failure of B.C. regulators to perform their statutory responsibilities. This is a report of the investigation conducted by this office and of the resulting conclusions and recommendations. Throughout this investigation, the Ombudsman's office has received the complete cooperation of B.C. government officials, past and present.

This public report includes a summary of the office's investigation into the B.C. regulatory history. This is necessary because there have been no public hearings in B.C. with respect to the collapse of the Principal Group of Companies. They have been held in Alberta through the court-ordered Code inquiry. It is also necessary because the practices and financial condition of AIC and FIC were matters of concern to B.C. regulators for almost

two decades, and an appreciation of the historical patterns during that period is crucial to an understanding of regulatory actions, omissions and decisions preceding the companies' collapse. The number of people affected, the amount of money at risk and the important public issues involved necessitate careful review.

It is important to note at the outset some readily apparent facts. First and most important, the incident is tragic. The investors are predominantly elderly and financially dependent for their retirement on the money at risk. They were not speculators but depositors in what they had legitimate reason to expect were financially responsible, competently regulated institutions. This profile was clearly identified in the Robinson report commissioned by Finance Minister Mel Couvelier shortly after the collapse.

The term 'administrative negligence' is used in this report to describe administrative acts, omissions or decisions of public officials in B.C. which failed to meet the standard of care that a reasonable person would recognize to be required of them. This is a common-sense test. The statutory responsibilities of the Superintendent of Brokers, as set out in the *Investment Contract Act*, provide a clear statement of that standard.

The major losses suffered by investors in investment contracts offered by AIC and FIC were foreseeable and would have been largely avoidable had the B.C. regulators acted reasonably to meet the standard set out in the statute. At a minimum, this standard required the regulators to ensure that all financial statements required of registrants under the Act were submitted in a timely manner and were examined to ensure that registrants at all times met the prescribed financial tests. The corporate practices that contributed eventually to the financial collapse of FIC and AIC in 1987 were known to B.C. regulators in the early 1970s, at which time appropriate steps were taken under the Act to protect investors. The statutory responsibilities that were recognized and discharged by the Superintendent of Brokers in the early 1970s were largely neglected from then until early in 1987.

It is reasonable to conclude that had the B.C. regulators continued to meet their statutory responsibilities, they would have become aware of the badly deteriorating financial situation of AIC and FIC in a timely way and would have either ordered effective remedial action or cancelled or suspended the companies' licences in time to prevent the major loss to the public which occurred.

The *Investment Contract Act* was unique legislation. It must be distinguished from securities legislation, which protects the individual investor by requiring mandatory disclosure of sufficient audited financial information to enable the investor to make a personal risk decision, and from banking or trust company legislation, which protects the individual depositor through mandatory deposit insurance and capital ratio requirements.

Because the *Investment Contract Act* did neither, the investment contract holder could only rely on the reasonable exercise of statutory responsibilities by B.C. regulators for the security of the investment. The degree of regulatory negligence in this case provided the opportunity for the *Investment Contract Act* to be used by AIC and FIC as a licence to deceive the public.

Many regulators, in their testimony to this office, referred to the fact that the powers given them by the Act were weak and its requirements were vague. However, actions taken both in the early 1970s and in 1987 indicate clearly that the Act had sufficient powers to regulate the companies effectively. Even if shortcomings existed and made the regulators' job more onerous, these in no way diminished their responsibility to administer the legislation to the best of their ability and to develop and apply clear policies and procedures to reduce the possibility of harm.

The compensation recommended at the conclusion of this report is not a charitable "bailout" for losses caused either by the investors' own fault or by third party actions outside of goverment control. Rather, it represents reasonable reimbursement for losses which were largely avoidable but for the clear and long-standing negligence of public officials in B.C. in the performance of their statutory responsibilities.

The recommendation is based on the significant degree of administrative negligence and its direct connection to the financial losses of the AIC and FIC investors. Although they must be presumed to have known the risks to investors, the officials responsible for regulating AIC and FIC under the *Investment Contract Act* failed variously to understand properly or in some cases even to read the statute; to take steps to ensure compliance with mandatory financial reporting requirements; to act effectively on public complaints related both to the suitability for licensing of AIC and FIC and to their deceptive trade practices; to act on significant indications of financial insolvency; to receive and review vital financial reports from Alberta regulators; and to act to halt known unlawful selling of investment contracts in B.C. by AIC and FIC while the companies' licences had lapsed. These negligent acts, omissions and decisions date back to at least 1979. Considered individually, some of them may not appear to be of great significance. However, their cumulative impact was substantial and over time adversely affected the interests of all B.C. investment contract holders as of July 2, 1987.

Several regulators suggested that a collapse would have been irresponsibly precipitated by stopping AIC and FIC from further selling or by notifying the public that they were not licensed to do business in B.C. This notion assumes that it is appropriate to fund current liabilities out of future investment contract sales. The suggestion that such a financing scheme might be required at any point should have been a clear indication to regulators that

the companies had serious financial problems and were a continuing danger to the public. To a large degree the reality of the threat of financial collapse is a measure of the extent to which the regulators had already been negligent in allowing the companies to operate in B.C. outside the statutory requirements.

The purpose of the *Investment Contract Act* was the protection of investment contract holders and potential purchasers, who would have been entitled reasonably to rely on the performance of regulatory responsibilities, having no independent access to essential financial information and no insurance or adequate capitalization protection against the financial failure of AIC and FIC. The major losses that occurred were foreseeable and preventable by B.C. regulators. The lack of effective regulatory action occurred not as a matter of considered public policy or through the bona fide exercise of discretion, but through negligent disregard for the responsibilities set out in the Act and for the interests of those specific individuals it was intended to protect.

This administrative negligence of B.C. regulators must be distinguished from the actions of their Alberta counterparts. It is evident from the Code Report that Alberta regulators were aware of the financial insolvency of AIC and FIC in 1984 but, under the direction of their Minister, deliberately failed to act on this information or to advise B.C. regulators of it. In B.C., the regulators were negligent in not becoming aware of this critical information in a timely way, either through their own direct review and analysis or, if they were to rely on Alberta as the primary regulatory jurisdiction, by requiring that Alberta supply them with this detailed information.

Although the head offices of AIC and FIC were in Alberta, the companies were required to be licensed under the B.C. *Investment Contract Act* in order to do business in this province. The companies' business in B.C. with which B.C. regulators had to be concerned was neither trivial nor incidental to their Alberta operations. Approximately $150 million was deposited with the chain of B.C. offices by more than 17,000 B.C. residents during the years immediately preceding the collapse. The statutory responsibilities of B.C. regulators to these B.C. investment contract holders are primary and unambiguous; no legal principle limits these responsibilities through an administrative deference to the judgements and actions of Alberta regulators. During the early 1970s there was regular and effective communication between B.C. and Alberta regulators. This deteriorated in the 1980s to the point that in the years immediately preceding 1987, neither bothered to advise the other adequately of its concerns, knowledge or actions, or to demand from the other the cooperation necessary to meet the regulators' respective statutory responsibilities.

B.C. regulators have stated that in the years preceding the Principal collapse they often relied on Alberta, as the province of primary jurisdiction, to conduct a close monitoring of the practices and financial condition of AIC and FIC and to forward information to B.C. For the most part that information was not provided and B.C. did little to pursue it. The theory of

primary jurisdiction is an informal and unlegislated arrangement between provinces. Its use did not reduce the responsibility of the B.C. regulators to perform fully their statutory responsibilities to B.C. investors and to ensure they were in possession of all information needed to fulfil those responsibilities.

If the B.C. government thinks that Alberta has not respected the terms of this informal arrangement (as it has been suggested in the Code Report that it did not), it should negotiate with the Alberta government an agreement to share more fully the responsibility for the compensation of B.C. investors. Given the importance of the notion of primary jurisdiction to all provinces, and the current negotiations to formalize it for all financial regulation across the country, B.C. should be in a strong position to do so. However, B.C. investors are not a party to their government's arrangements, and it would be unjust for the B.C. government to leave them to their own resources to pursue the Alberta government for compensation.

Many of the regulators who gave evidence during this investigation referred to inadequate resources in the Superintendent of Brokers' office. Such problems are not unique in government. It is not for the Ombudsman's office to comment on policy decisions regarding the allocation of scarce resources. However, where government decides to legislate specific regulatory responsibilities, it must ensure that adequate resources are provided to its officials to fulfil them.

It is important to note that this office has found no indication of attempts by anyone to improperly influence politicians or public servants in B.C. with regard to the regulation of AIC and FIC. There is also no indication that any improper political influence or direction was brought to bear on B.C. regulators in relation to these companies. There is also no indication that any public servant acted with improper motive.

This report includes a summary of the factual history of the involvement of B.C. government officials with AIC and FIC from 1970 to 1987. It identifies the many negligent breaches of statutory responsibility during this period and identifies a direct cause and effect relationship between this administrative negligence and the major financial losses suffered by the investors in these companies.

A finding of administrative negligence and a recommendation for compensation to remedy the harm caused by it under section 22 of the *Ombudsman Act* is not necessarily based on the same findings as a court would require to establish legal liability. The Ombudsman's authority to recommend remedial action derives from the premise that a fair remedy with respect to administrative wrongdoing is not always available at law. This is a premise that is fundamental to the creation of the institution of the Ombudsman as an entity separate from the formal justice system.

To a large extent, the office of the Ombudsman was established by the Legislature in recognition of the inadequacy of the courts to deal with many injustices arising from the nature of modern bureaucracy. To quote Chief Justice Dickson from a unanimous decision of the Supreme Court of Canada:

> The limitations of courts are also well known. Litigation can be costly and slow. Only the most serious cases of administrative abuse are therefore likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases
>
> Read as a whole, the Ombudsman Act of British Columbia provides an efficient procedure through which complaints may be investigated, bureaucratic errors and abuses brought to light and corrective action initiated. It represents the paradigm of remedial legislation. It should therefore receive a broad, purposive interpretation consistent with the unique role the Ombudsman is intended to fulfil.[1]

Section 22 of the *Ombudsman Act* authorizes the Ombudsman to conclude that public officials, in the administration of their duties, have acted negligently and, where this has occurred, to recommend to government the means by which the harm caused by such failure should be remedied. This authority is independent of the existence of a private law remedy through the courts.

The strict legal principles by which the courts determine the liability of public officials for the consequences of their negligence are complex and uncertain. While a strong legal argument can be made out that government, because of the administrative negligence of its officials, is legally liable to the investors for their losses in this case, such liability is not certain and would only be settled by a decision of the Supreme Court of Canada, which would take many years at vast public and private expense. In addition, whatever the ultimate court decision might be, it would not lessen for the investors the years of financial uncertainty already suffered or the degree of administrative negligence identified in this report.

In many situations, the law does not apply to the actions of public administrators in the same manner as it applies to those of private citizens. The Law Reform Commission of Canada has recently commented on this dilemma:

> Concepts and principles which are appropriate to private law are often ill-suited to deal with problems arising in the public law context. Tort liability of the Crown, for instance, is addressed in the same terms as are used to determine liability between private parties. The use of private law offers many opportunities for the State to escape liability which we might, as a matter of public policy, want it to bear.
>
> As well, given the fundamental economic inequality between the parties and the extraordinary procedural privileges enjoyed by the Administration, the procedure which governs curial [court] proceedings in contentious matters is manifestly ill-adapted to the special nature of litigation between the individual and the Administration
>
> One non-curial external control could be provided by ombudsmen... This institution is non-adversarial in nature and exemplifies the diverse avenues of redress for individuals, which, although non-judicial, can and do enjoy a high degree of independence.[2]

Like the Supreme Court of Canada, the Law Reform Commission points out the effectiveness of an Ombudsman office in identifying error and resulting harm and in recommending a remedy in situations where there may simply never be a fair judicial resolution of the harm caused by bureaucratic error.

The fact that the application of strict legal principles and processes may not provide a remedy in all cases does not mean that government can ignore its responsibility to remedy the consequences of the negligence of its own officials. It has a duty to treat people fairly, not simply to meet technical legal standards, and when individuals have been harmed through the clear failure of public officials to act reasonably in their administrative duties, government should act quickly to remedy that harm.

While the administrative negligence of B.C. regulators was a major contributing cause of the B.C. investment contract holders' losses, it was not the only cause. Alberta government officials deliberately declined to act on clear evidence of the insolvency of AIC and FIC in 1984, and failed to advise B.C. regulators of this evidence. The Alberta government has accepted a measure of responsibility to B.C. investors by extending to them its compensation offer of ensuring 75% recovery. As identified in the Code Report, corporate officials of AIC and FIC did not act in the best interests of investment contract holders, failed to deal with the impact of the real estate collapse, and were a direct cause of the losses. Finally, the investment contracts could not have been totally secure investments, even if the companies had been perfectly regulated, because government regulators could not have been reasonably expected to exercise total and immediate control over the companies. The quarterly review of financial statements, together with regulatory due process, created an unavoidable time lag during which some losses could occur before a responsible decision to cancel licences could be made.

However, given the extensive administrative negligence of public officials in B.C. identified in this report, it would be unconscionable for the B.C. government to attempt to evade its responsibilities by putting those affected to years of expensive and debilitating litigation against itself. The reality for many of the elderly investors is that they would not survive the process.

In all of these circumstances, it is recommended that the B.C. government meet its responsibility to B.C. investment contract holders by supplementing their recovery from asset liquidation and distribution such as to achieve an overall 90% recovery of losses of principal and interest to July 2, 1987. Given the conditions which Alberta has imposed on the acceptance of its offer to investors, the B.C. government should negotiate aggressively to achieve a significant contribution from Alberta to compensate for the consequences of its deliberate failure to keep B.C. officials properly advised. Further, it is recommended that the B.C. government assist the investors financially to pursue whatever legal recourse might be available against company officials or other parties in order that they might eventually recover 100% of their losses, as they deserve to do.

This recommended compensation and assistance should not be considered to be an expensive precedent, because the situation is unique. Since the collapse of AIC and FIC, the *Investment Contract Act* has been repealed in B.C., and the many bureaucratic failures identified in this report are being or have already been addressed by the Superintendent of Brokers' office, the Ministry of Finance and Corporate Relations and the Securities Commission. However, the case should serve as a clear reminder to government that if it is to legislate to itself statutory responsibility then it must protect the public from the harm caused by the administrative negligence of its officials in failing to fulfil that responsibility.

Stephen Owen
Ombudsman

Appendix E.

MacLellan Report (Conclusions and Recommendations)

Chapter V

Recommendation

Compensation to Investors

Following from my consideration of the matter, I feel the Saskatchewan government should act to bring the investors' recovery from company and provincial government sources to 90 percent of the value of their investment as at July 2, 1987 - the day the FIC/AIC licences were suspended in Saskatchewan - and I so recommend. In making this recommendation I am cognizant of the impending Alberta offer to all the investors in FIC/AIC, regardless of their province of residence. However, so far as is known at present, the Alberta offer would require that any recoveries received be apportioned between the investors and the province (of Alberta). I take this to mean that an investment contract holder who receives any compensation from Saskatchewan will have to assign the amount to Alberta for distribution on a pooling basis. This condition makes the Alberta offer objectionable to many investors.

As was announced on September 23, 1989 in a News Release from the B.C. Minister of Finance and Corporate Relations, the Honourable Mel Couvelier, the B.C. government offered partial compensation of 15 cents on the dollar to persons who had purchased their investment contracts in that province. Added to Alberta's offer this would theoretically bring the B.C. investors' recovery to 90 per cent, but the News Release noted:

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"When asked how the British Columbia settlement relates to that offered previously by the Government of Alberta, Couvelier said that he expected the Alberta offer to be conditional on a requirement for investors to "pool" other monies received and share them with all investors. If such a condition applies to the British Columbia offer, British Columbia investors will only be permitted to keep about one-third of the British Columbia payment, with the remainder flowing to investors in other jurisdictions.

Couvelier is urging Alberta not to apply a pooling condition to British Columbia's offer, since this action would be unfair and could lead to lengthy interprovincial litigation. However, even if there is a pooling condition, the British Columbia offer will stand and investors will be able to accept both, recovering about 80 per cent of their investment in total."

From the above it obviously follows that Saskatchewan investors who accept Alberta's offer will likewise be required to assign any recovery from Saskatchewan to Alberta for pooling, thus diluting the recovery and assisting all investors to a greater recovery than 75 per cent, but at no additional cost to the Government of Alberta.

My concern is for the investment contract holders in Saskatchewan and it is obvious that the only way to protect the investors from such a scheme is for the Saskatchewan government to provide the full difference between present recovery and 90 cents on the dollar. This would amount to 33 cents on the dollar to FIC contract holders and 30 cents on the dollar to AIC contract holders.

While my recommendation reflects the total disregard of its regulatory obligations by the Government of Saskatchewan, I recognize the role of the Alberta government in the fiasco and do not feel that the Saskatchewan government (the people of Saskatchewan) should have to bankroll Alberta's responsibility to its own citizens. However, given the conditions attached to Alberta's offer such "assistance" to the investors in that province (perhaps assistance to the Alberta government would be more correct) could only be avoided by Saskatchewan paying out its own investors the full 33/30 cents on the dollar, and then seeking appropriate recovery from Alberta. Anything less would leave the Saskatchewan investors in an invidious position, as has happened in B.C.

I am aware that the Saskatchewan government is on record as stating there will be no bail-out for FIC/AIC investors," on the basis that the fault lies solely with Alberta and that the Saskachewan regulators did nothing wrong. The Honourable Gary Lane said in the Assembly, on September 10, 1987:

> "I think that the government's position has been well stated before on numerous occasions, Mr. Speaker, and that is that the

department complied with its mandate, and that it was acting under the proper advice and in the normal course of its activities."

and on July 19, 1989 the then Minister of Consumer and Commercial Affairs, the Honourable Ray Meiklejohn, stated:

"Mr. Speaker, there is no evidence of any negligence on the part of this government."

I venture to suggest that the government can no longer maintain such a posture with any degree of credibility, and I submit that these statements were made without a real awareness of the history of non-regulation in this province - a history which encompasses all administrations since 1952.

Chapter VI

Conclusion

Comments

In concluding this report I wish to thank Deputy Minister Kesslar and his officials for their complete co-operation during my investigation.

I also wish to comment that the circumstances surrounding this case are unlikely to arise again. Responsibility for the ICA was transferred to the Securities Commission in 1987, following the Principal Group collapse and the Act was later repealed with the passing of the new Securities Act in November, 1988. I do not see that acceptance of my recommendation would set a precedent for the Government.

In addition, as regards the continuing responsibility of the Department of Consumer and Commercial Affairs for the registration and regulation of out-of-province companies, I am pleased to note that a formal Intergovernmental Agreement on Information Sharing on Financial Institutions was inked between the four Western Provinces on October 31, 1988, followed by a similar agreement between all ten provinces, signed on April 20, 1989. These agreements provide for the exchange of information, on a reciprocal basis, for the purposes of policy development and for the administration and enforcement of provincial statutes regulating financial institutions.

This is an eminently sensible and overdue development. A primary or incorporating regulator can no longer deny the existence of a convention of reliance on his/her administration of regulatory statutes but, so far as I am aware, these statutes do not acknowledge the existence of the agreements and they still impose specific obligations on the secondary regulator. A secondary jurisdiction cannot just sit back and hope; there must still be active participation by all regulators. Certainly the complacency of the past has been exchanged for a renewed intention to do the job as it should be done, and it is to be hoped that the lessons of this Principal affair will endure.

In the interest of fairness I would emphasize that the failure in this case was failure of government as a whole. Certainly the individual officials involved were administratively negligent, but political reality and a lack of continuity at the permanent head level did not help. Eight changes of Deputy Minister and/or acting Deputy Minister between 1978 and 1984, while perhaps unavoidable, is scarcely the way to consistency of administration or to the development of departmental programs. Also, the loss of a new (1984) Compliance Review Officer position in the Superintendent's office to the government's austerity axe, after only ten months, is scarcely the way to further the regulatory effectiveness of that office.

Although, at the material time, there were only three investment contract companies in Saskatchewan, the Superintendent's office had numerous other responsibilities. With 303 insurers, 93 Trust and Loan Corporations, 459 Real Estate Brokers, 1,019 businesses in the agricultural implement industry, 280 Credit Unions, 1,180 other

licencees in the Province, and an establishment of only 22 investigative and audit personnel, the office has an immense task. This is not to say that they couldn't find the staff to examine the FIC/AIC documents (tradition had assigned them to a low regulatory priority) but it's a harsh reality that expediency seldom pays any regard to actual staffing needs in relation to the function performed.

The description of the Compliance Review Officer position cited its purpose as:

> "... to review and analyze complex schemes and proposals such as timesharing, pyramid franchising, insurance and reinsurance, real estate brokerage and sales, investment contracts, trust and loan proposals and any other general plan or schemes that come under the general purview of the licensing statutes administered by this Branch. The purpose of the review and analysis is to ensure that established standards are met in the area of legislation, regulation or administrative policy."

The Compliance Review Officer may not have made any difference so far as the FIC/AIC collapse is concerned - the investment contract companies were no big priority - but the government's effectiveness in consumer protection was not enhanced by the loss of this position so soon after its necessity had been recognized by its addition to the Superintendent's establishment. All too frequently, it seems, governments fail to adequately recognize the need to properly meet the statutory obligations it assumes through legislation. All too often do administrators

cite lack of staff as the reason for failures in such areas.

I think, however, that this Principal Group case demonstrates to government that it must take its responsibilities seriously. Regulatory and watchdog agencies set up for the protection of the public must be given the wherewithal to perform their duties in a meaningful and timely fashion, and not be relegated to the status of political window dressing. If the government legislates to itself specific functions, it must be in a position to fulfill those functions - or face the consequences.

However, while my findings and recommendation are firm, I do not wish to leave the impression that the Department of Consumer and Commercial Affairs is, or has ever been, totally ineffective. As I've said, my raison d'etre is fairness and I must acknowledge that the department is not a major source of complaints to my office. Given the volume of contact with the public, the department must be doing something right to generate only 9 complaints in 1988. Also, their consumer education program is a success story and a model for the rest of the country.

But as governments are happy to accept praise for achievements, so too must they accept the blame for failures, and it is the mark of a fair government to put right the wrongs for which it may be responsible.

62

I therefore urge the Government of Saskatchewan to put right the wrong done to the citizens of this Province by its failure in the administration of The Investment Contracts Act as regards First Investors Corporation Ltd. and Associated Investors of Canada Ltd.

Appendix F.

Ombudsman Act

Ombudsman Act

CHAPTER 3

STATUTES

of

NOVA SCOTIA 1971

QUEEN'S PRINTER
Halifax, Nova Scotia

1988

CHAPTER 0-2

AN ACT TO ESTABLISH THE OFFICE OF OMBUDSMAN
cited as
S.N.S., 1970-71, Chapter 3

Short Title

1 This Act may be cited as the Ombudsman Act, 1970-71, c. 3, s. 1.

Interpretation

2 In this Act,

(a) "agency" means an agency, board, commission, foundation or corporation established under an enactment which

(i) is appointed or has a majority of its members appointed by the Governor in Council, a member of the Executive Council, or the Province; and

(ii) is supported by or directs the expenditure of public funds of the Province;

(b) "chief officer" includes a Deputy Minister, the head or chief executive officer of an agency, the mayor of a city or town, the warden of a municipality to which the Municipal Act applies, and the head or chief executive officer of a municipal agency;

(c) "department" means a department of the Government of Nova Scotia and includes an agency;

(d) "House" means the House of Assembly;

(e) "Minister" means the member of the Executive Council who presides over a department or who is in charge of or responsible for an agency;

(f) "municipal agency" means an agency, board, school

board, commission, foundation, corporation, hospital or a welfare, penal or other institution established by or on behalf of or controlled by a municipal unit or two or more municipal units;

(g) "municipal unit" means a municipality to which the Municipal Act applies, a city or a town, and includes a municipal agency;

(h) "officer" means any official, employee or member of a department or a municipal unit;

(i) "Ombudsman" means the Ombudsman appointed under this Act. 1970-71, c. 3, s. 2.

Ombudsman

3 (1) There is hereby established, as an officer of the House, a commissioner for investigations to be called the Ombudsman.

Appointment

(2) The Ombudsman shall be appointed by the Governor in Council.

Eligibility for Office

(3) The Ombudsman may not be a member of the House and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office without prior approval in each particular case by the House or by the Governor in Council when the House is not in session.

Salary

(4) The Ombudsman shall be paid such salary as is determined from time to time by the Governor in Council.

Oath of Office

(5) Before entering upon the exercise of the duties of his office the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

Administration of Oath

(6) The Speaker or the Chief Clerk of the House shall administer the oath referred to in subsection (5).

Costs and Expenses

(7) The costs and expenses incurred by the Ombudsman or in the administration of the Act may be paid from the Consoldiated Fund. 1970-71, c. 3, s. 3; 1974, c. 48, s. 1.

Term of Office and Re-appointment

4 (1) Unless his office sooner becomes vacant, the Ombudsman is to hold office for five years from the date of his appointment under Section 3 and, if otherwise qualified, is eligible to be reappointed [re-appointed].

Resignation

(2) The Ombudsman may resign his office by notice in writing addressed to the Speaker of the House or, if there is no Speaker or if the Speaker is absent from the Province, to the Chief Clerk of the House. 1970-71, c. 3, s. 4.

Removal or Suspension by Governor in Council

5 (1) On the recommendation of the House, the Governor in Council may remove or suspend the Ombudsman from his office for cause or incapacity.

Suspension by Judge

(2) When the House is not in session, a Judge of the Trial Division of the Supreme Court of Nova Scotia may suspend the Ombudsman from his office for cause or incapacity upon an application by the Governor in Council.

Practice and Procedure

(3) Where the Governor in Council makes an application under subsection (2) the practice and procedure of the Supreme Court of Nova Scotia shall apply mutatis mutandis to the application.

Acting Ombudsman and Tabling of Report

(4) Where a Judge of the Trail [Trial] Division of the Supreme Court of Nova Scotia suspends the Ombudsman under subsection (2) that Judge shall

(a) request the Governor in Council to appoint a person as an acting Ombudsman to hold office until the suspension has been dealt with by the House; and

(b) table a report of the suspension within ten days following the commencement of the next ensuing session of the House.

Duration of Suspension

(5) A suspension under subsection (2) is not to continue beyond the end of the next ensuing session of the House. 1970-71, c. 3, s. 5.

Extent of Disclosure in Report of Ombudsman

6 Notwithstanding subsection (5) of Section 3, the Ombudsman may disclose in a report made by him under this Act any matters which in his opinion are necessary to disclose in order to establish grounds for his conclusions and recommendations. 1970-71, c. 3, s. 6.

Personnel

7 (1) The Ombudsman may, subject to the approval of the Governor in Council, appoint such assistants and employees as he deems necessary for the efficient carrying out of his functions under this Act.

Oath

(2) Before performing any official duty under this Act a person appointed under subsection (1) shall take an oath, to be administered by the Ombudsman, that he will not divulge any information received by him under this Act, except for the purpose of giving effect to this Act. 1970-71, c. 3, s. 7.

Delegation of Powers

8 (1) The Ombudsman, by writing under his signature, may delegate to a person appointed an assistant under subsection (1) of Section 7 any of his powers under this Act except the power of delegation and the power to make a report under this Act.

Duty To Produce Evidence of Delegation

(2) A person purporting to exercise power of the

Ombudsman by virtue of a delegation under subsection (1) shall produce evidence of his authority to exercise that power when required to do so. 1970-71, c. 3, s. 8.

Ombudsman Is Commissioner

9 For the purposes of this Act, the Ombudsman is a Commissioner under the Public Inquiries Act. 1970-71, c. 3, s. 9.

Act Does Not Apply

10 This Act does not apply

(a) to judges, magistrates and justices or to the functions of any court of the Province; and

(b) to deliberations and proceedings of the Executive Council or any committee thereof. 1970-71, c. 3, s. 10.

Investigation of Complaint

11 (1) Subject to subsection (2), where any person is aggrieved or in the opinion of the Ombudsman, may be aggrieved, the Ombudsman, on the written complaint of or on behalf of the person aggrieved or on his own motion, may investigate the administration,

(a) by a department or an officer thereof, of any law of the Province;

(b) by a municipal unit or an officer thereof, of any law of the municipal unit or any law of the Province that applies to the municipal unit.

Matters Not To Be Investigated

(2) Notwithstanding subsection (1), the Ombudsman shall not investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, whether or not that right of appeal or objection or application has been

exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired; and [or]

(b) any decision, recommendation, act or omission of any person acting as a solicitor or prosecuting officer for the Crown or acting as council for the Crown in relation to any proceeding.

Determination of Jurisdiction

(3) Where a question arises as to the jurisdiction of the Ombudsman to investigate a grievance under this Act, he may apply to the Appeal Division of the Supreme Court of Nova Scotia for a determination of the question of his jurisdiction. 1970-71, c. 3, s. 11.

Application for Investigation

12 (1) Subject to the provisions of this Act, a person may apply by written complaint to the Ombudsman to investigate a grievance.

Referral by Committee of House

(2) Notwithstanding Sections 14, 20 and 21, a committee of the House may refer any petition that is before the committee for consideration or any matter relating to such petition to the Ombudsman for investigation and report.

Investigation and Report to Committee

(3) Notwithstanding Sections 14, 20 and 21, where a matter has been referred to the Ombudsman under subsection (2), the Ombudsman, subject to any special directions of the committee, shall investigate the matter as far as it is within his jurisdiction and shall make such report to the committee as he thinks fit.

Letter from Person in Custody or Mental Patient

(4) Notwithstanding any Act, where a letter written by a person in custody on a charge or after conviction of any offence or by any inmate or patient of any sanatorium or mental hospital is addressed to the Ombudsman, it shall be forwarded immediately, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate or patient. 1970-71, c. 3, s. 12.

Statutory Prohibitions Inapplicable

13 Notwithstanding any other Act providing that a decision, recommendation, act or omission is final or that no appeal lies in respect thereof or that no proceeding, decision, recommendation, act or omission of a department or municipal unit or officer thereof is to be challenged, reviewed, quashed or called in question, the Ombudsman may exercise the powers under this Act. 1970-71, c. 3, s. 13.

Refusal or Cessation of Investigation

14 (1) The Ombudsman, in his discretion, may refuse to investigate or may cease to investigate a grievance if

(a) an adequate remedy or right of appeal already exists whether or not the complainant has availed himself of the remedy or right of appeal; or

(b) the grievance is trivial, frivolous, vexatious or not made in good faith; or

(c) having regard to all the circumstances of the case, further investigation is unnecessary; or

(d) the grievance relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before complaining; or

(e) the complainant does not have a sufficient personal interest in the subject matter [subject-matter] of the grievance; or

(f) upon a balance of convenience between the public interest and the person aggrieved the Ombudsman is of the opinion that the grievance should not be investigated.

Notification of Refusal or Cessation

(2) Where the Ombudsman decides not to investigate or to cease to investigate a grievance he shall inform the complainant and any other interested person of his decision and may state his reasons therefor. 1970-71, c. 3, s. 14.

Notification of Investigation

15 Where the Ombudsman intends to investigate a grievance under this Act, he shall,

(a) in the case of a grievance relating to a department, notify the Minister and the chief officer of the department;

(b) in the case of a grievance relating to a municipal unit, notify the chief officer of the municipal unit. 1970-71, c. 3, s. 15.

Investigation in Private

16 (1) Every investigation under this Act is to be conducted in private.

Hearing and Making Inquiries

(2) Subject to this Act, the Ombudsman may hear or obtain information from any person and may make inquiries.

Restriction on Right To Be Heard

(3) The Ombudsman may hold hearings under this Act but, subject to subsections (4) and (5), no person is entitled as of right to be heard by the Ombudsman.

Hearing Required

(4) Where during an investigation the Ombudsman is satisfied that there is prima facie evidence that

(a) a department of [or] officer thereof administered a law of the Province;

(b) a municipal unit or officer thereof administered a law of the municipal unit or any law of the Province that applies to the municipal unit,

so as to cause a grievance or to give cause for a grievance he shall so advise the Minister and the chief officer of the department or the chief officer of the municipal unit, as the case may be, and the officer causing the grievance and give each an opportunity to be heard.

Right to Counsel

(5) Where a Minister, a chief officer or officer thereof

appears at a hearing under subsection (4) they are entitled to counsel.

Consultation Permitted

(6) The Ombudsman may at any time during or after an investigation consult a Minister or chief officer of a department or a municipal unit concerned in the matter of the investigation.

Consultation Required

(7) Before forming a final opinion on any matter referred to in subsection (1) of Section 20, the Ombudsman shall consult with

(a) the Minister, when the investigation relates to a department, a recommendation to the Minister or when the Minister requests; or

(b) the chief officer of the municipal unit when the investigation relates to a municipal unit.

Referral by Ombudsman

(8) Where during or after an investigation the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct by a department or municipal unit or officer thereof, he shall refer the matter to the Minister and chief officer of the department or the chief officer of the municipal unit.

Procedure

(9) Subject to this Act and any rules made under Section 26[25], the Ombudsman may regulate his procedure. 1970-71, c. 3, s. 16.

Duty To Furnish Information

17 (1) Subject to subsections (2), (3), (4), (5), (6) and (7) and Section 18, where the Ombudsman requests a person who in the opinion of the Ombudsman is able to furnish information relating to a matter being investigated by the Ombudsman to furnish such information, that person shall furnish that information and produce any documents or papers that in the opinion of the Ombudsman relate to the matter and that may be in the possession or under the control of that person whether or not that person is an officer of a department or municipal unit, and

whether or not the documents and papers are in the custody or under the control of that department or municipal unit.

Summons and Examination of Witness

(2) The Ombudsman may summon before him and examine on oath

(a) any officer of a department or municipal unit who in his opinion is able to give any information referred to in subsection (1);

(b) any complainant; and

(c) with the approval of the Attorney General, any other person who in the opinion of the Ombudsman is able to give any information referred to in subsection (1).

Administration of Oath

(3) The oath referred to in subsection (2) is to be administered by the Ombudsman.

Privileged Information

(4) Subject to subsection (5), where a person is bound by any law or by an enactment to maintain secrecy in relation to, or not to disclose any matter, the Ombudsman shall not require that person to supply any information or to answer any question in relation to that matter or to produce any document or paper relating to the matter which would be in breach of the obligation of secrecy or non-disclosure.

Consent To Release Certain Privileged Information

(5) With the prior consent in writing of the complainant the Ombudsman may require a person to whom subsection (4) applies to supply information or answer questions or produce documents or papers relating only to the complainant and that person shall do so.

Rules of Evidence

(6) The rules for taking evidence in the Supreme Court of Nova Scotia apply to evidence given by a person required to give information, answer questions and produce documents or papers under this Act.

Witness Fees and Expenses

(7) Any person required to attend a hearing under this Act is entitled to the same fees, allowance and expenses as if he were a witness in the Supreme Court of Nova Scotia.

Evidence to Ombudsman Inadmissible in Court

(8) Except on the trial of a person for perjury, evidence given by any person in proceedings before the Ombudsman and evidence of any proceeding before the Ombudsman is not admissible against any person in any court or in any proceedings of a judicial nature.

No Liability for Compliance

(9) No person is liable for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this Act. 1970-71, c. 3, s. 17.

Protection of Executive Council

18 (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper may disclose

(a) deliberations of the Executive Council; or

(b) activities of the Executive Council or any member of the Executive Council relating to matters of a secret or confidential nature and would be injurious to the public interest;

the Ombudsman shall not require the information or answer to be given or the document or paper produced.

Information Injurious to Public Interest

(2) Subject to subsection (1), a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure of the document, paper or thing, or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman. 1970-71, c. 3, s. 18.

Right of Entry and Investigation

19 (1) For the purposes of this Act the Ombudsman may enter upon any premises occupied by any department or municipal unit and, subject to Sections 17 and 18, carry out any investigation within his jurisdiction.

Notice of Intent To Enter

(2) Before entering any premises under subsection (1) the Ombudsman shall notify the chief officer of the department or municipal unit of his intention to enter the premises. 1970-71, c. 3, s. 19.

Report of Ombudsman if Grievance Established

20 (1) Where upon investigation the Ombudsman is of the opinion that a grievance exists or may exist because a department or municipal unit or officer thereof administered or is administering a law of the Province or a law of the municipal unit or a law of the Province that applies to the municipal unit,

(a) unreasonably, unjustly, oppressively or in a discriminatory manner, or pursuant to a rule of law, enactment or practice that so results; or

(b) under mistake of law or fact, in whole or in part; or

(c) wrongly; or

(d) contrary to law; or

(e) by using a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or by failing to give reasons for the use of a discretionary power when reasons should have been given;

and if the Ombudsman is of the opinion that

(f) the grievance should be referred to the department or municipal unit or officer thereof for further consideration; or

(g) an omission should be rectified; or

(h) a decision should be cancelled or rectified; or

(i) a practice by reason of which the grievance arose or may arise should be altered; or

(j) a law by reason of which the grievance arose or may arise should be reconsidered; or

(k) reasons should be given for the use of a discretionary power; or

(l) other steps should be taken as he may advise,

the Ombudsman shall report his opinion, his reasons therefor and any recommendation to the Minister and the chief officer of the department or the chief officer of the municipal unit concerned.

Notice of Implementation of Recommendation

(2) Where the Ombudsman makes a recommendation under subsection (1) he may request the department or municipal unit to notify him within a specified time of the steps it proposes to take to give effect to his recommendations.

Report where Recommendation Not Implemented

(3) Where, after the time stated under subsection (2), the department or municipal unit does not act upon the recommendation of the Ombudsman, refuses to act thereon, or acts in a manner unsatisfactory to the Ombudsman, the Ombudsman may send a copy of his report and recommendation to the Governor in Council, in the case of a department, or the council of the municipal unit, in the case of a municipal unit, and may thereafter make a report to the House.

Included in Report

(4) The Ombudsman shall include with any report made under subsection (3) a copy of any comment made by the department or municipal unit upon his opinion or recommendation.

Hearing Required for Person Adversely Affected

(5) In any report made by him under this Act the Ombudsman shall not make any finding or comment that is adverse to any person unless he gives that person an opportunity to be heard. 1970-71, c. 3, s. 20.

Duty To Inform Complainant

21 (1) Where the Ombudsman makes a recommendation under subsection (1) of Section 20 and the department or municipal unit does not act upon such recommendation to his satisfaction, the Ombudsman shall inform the complainant of his recommendation and may add any comment.

Further Duty To Inform Complainant

(2) The Ombudsman shall in any case inform the complainant in the manner and time he deems proper of the result of the investigation. 1970-71, c. 3, s. 21.

Review of Decision of Ombudsman

22 No proceeding of the Ombudsman is void for want of form and, except on the ground of lack of jurisdiction, no proceedings or decisions of the Ombudsman are to be challenged, reviewed, quashed or called in question in any court. 1970-71, c. 3, s. 22.

No Liability of Ombudsman or Personnel

23 (1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman for any thing he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown he acted in bad faith.

Not Compellable Witness

(2) The Ombudsman and any person holding any office or appointment under the Ombudsman shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act. 1970-71, c. 3, s. 23.

Annual Report

24 (1) The Ombudsman shall report annually to the House on the exercise of his functions under this Act.

Publication of General Report

(2) The Ombudsman, in the public interest or in the interests of a person, department or municipal unit, may publish reports relating generally to the exercise of his functions under this

Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of a report made to the House under this Act. 1970-71, c. 3, s. 24.

General Rules

25 The House may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act. 1970-71, c. 3, s. 25.

Offences and Penalties

26 Every person who

(a) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his functions under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirements of the Ombudsman or any other person under this Act; or

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his functions under this Act;

(d) refuses or wilfully fails to comply with subsection (4) of Section 12,

is guilty of an offence and on summary conviction is liable to a penalty not exceeding five hundred dollars. 1970-71, c. 3, s. 26.

Existing Right or Remedy Preserved

27 This Act does not affect, abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any substantive or procedural right or remedy existing elsewhere or otherwise than in this Act. 1970-71, c. 3, s. 27.

Proclamation

28 This Act or any Section or Sections of it comes into

force on and not before such day as the Governor in Council orders and declares by proclamation. 1970-71, c. 3, s. 28.

Proclaimed - April 27, 1971
In Force - April 27, 1971

Appendix G.

Present Securities Regulation in Nova Scotia - Observations

The observations on current securities regulation in Nova Scotia which follow are included here with the permission of Mr. Robert B. MacLellan. Mr. MacLellan is a partner in the law firm of Burchell, MacDougall and Gruchy in Truro, and currently serves as Chairman of the Securities Commission of Nova Scotia. He lectured in corporate finance and business law at the Dalhousie Law School for six years and played a leading role in the development of the present securities regulatory system of this Province.

Robert B. MacLellan, Address to the Insight Conference on Canadian Securities Regulation, November 15, 1989.

THIS AFTERNOON I WANT TO SPEAK TO YOU BRIEFLY ABOUT THE NEED FOR RELIANCE BY REGULATORS OF THE FINANCIAL MARKETS ON ONE ANOTHER. THIS INCLUDES RELIANCE BY SECURITIES REGULATORS ON EACH OTHER AS WELL AS RELIANCE BY SECURITIES REGULATORS ON OTHER FINANCIAL MARKET REGULATORS AND VICE VERSA.

MY HYPOTHESIS IS THAT IN A FEDERAL STATE OF 25,000,000 PEOPLE IN WHICH SECURITIES REGULATION IS WITHIN PROVINCIAL JURISDICTION IT IS INEFFICIENT AND UNREALISTIC TO EXPECT EACH PROVINCE TO REGULATE IN A VACUUM WHICH IGNORES THE NATIONAL AND INCREASINGLY INTERNATIONAL NATURE OF SECURITIES MARKETS AND THE ROLE OF FELLOW REGULATORS IN OTHER PROVINCES AND JURISDICTIONS.

THIS IS NOT A DISCUSSION OF WHETHER IT IS RATIONAL IN THIS DAY AND AGE FOR PROVINCES TO REGULATE SECURITIES MARKETS. RATHER IT IS A COMMENTARY ON HOW A PERHAPS OTHERWISE IRRATIONAL SYSTEM OF PROVINCIAL REGULATIONS CAN BE MADE A BIT MORE RATIONAL AND EFFICIENT. - (ECONOMIC DEVELOPMENT INITIATIVES).

THERE ARE TWO ASPECTS OF EFFICIENCY IN THE CONTEXT OF THIS DISCUSSION. FIRST THERE IS EFFICIENCY OF CAPITAL FORMATION AND SECONDLY EFFICIENCY IN INVESTOR PROTECTION. IN MY OPINION THERE IS NO INCONSISTENCY IN THE APPROPRIATE MECHANISMS TO ACHIEVE THESE EFFICIENCIES.

EFFICIENCY OF CAPITAL FORMATION SHOULD BE THE OVERALL OR BROAD POLICY OBJECTIVE OF ALL FINANCIAL MARKET REGULATION. THE FUEL WHICH DRIVES A FREE ENTERPRISE ECONOMIC SYSTEM IS CAPITAL AND THE COMPETITIVENESS OF THE ECONOMY RESTS UPON THE ABILITY

OF BUSINESS TO ASSEMBLE OR FORMULATE POOLS OF CAPITAL. THE MORE EFFICIENTLY CAPITAL CAN BE FORMED THE MORE COMPETITIVE CANADA WILL BE IN AN INTERNATIONAL MARKET. ON THE OTHER HAND IF THE SYSTEM DOES NOT ENCOURAGE OR IS NOT CONDUCIVE TO CAPITAL FORMATION THE FUEL OF THE CAPITALISTIC SYSTEM WILL NOT BE AVAILABLE AND THE SYSTEM WILL BE DOOMED TO FAILURE.

SECURITIES REGULATION SHOULD THEREFORE BE VIEWED IN THE CONTEXT OF THE OBJECTIVE OF ENCOURAGING CAPITAL FORMATION. IT SEEKS TO ACHIEVE THIS OBJECTIVE BY ESTABLISHING AND MAINTAINING THE INTEGRITY OF THE CAPITAL MARKETS. IN THIS CONTEXT INTEGRITY MEANS INVESTOR CONFIDENCE. INVESTOR CONFIDENCE IS ENCOURAGED BY A SYSTEM WHICH EMPHASIZES FAIRNESS BY MANDATING FULL, TRUE AND PLAIN DISCLOSURE IN THE PRIMARY MARKETS THROUGH PROSPECTUS DISCLOSURE AND IN THE SECONDARY MARKETS THROUGH CONTINUOUS DISCLOSURE. THIS IS AUGMENTED IN THE SECONDARY MARKET THROUGH INSIDER TRADING PROHIBITIONS AND TAKEOVER BID REGULATION. THE BLUE SKY THEORY OF SECURITIES REGULATION EXTENDS THE STANDARD OF FULL, TRUE AND PLAIN DISCLOSURE BY IMPOSING A PROHIBITION ON THE OFFERING OF SECURITIES WHICH CANNOT PASS THE "SMELL TEST". THE PROBLEM WITH THE BLUE SKY PERSPECTIVE IS TWOFOLD. FIRST, IT IS INCONSISTENT WITH THE THEORY THAT THE MARKET PLACE SHOULD JUDGE THE MERIT OF AN OFFERING AND THEREFORE ITS SUCCESS AND SECONDLY IT INEVITABLY SUBSTITUTES THE JUDGMENT OF BUREAUCRATS FOR THAT OF REAL INVESTORS. IF I MAY EXPRESS A PERSONAL VIEW, I AM OF THE SCHOOL WHICH BELIEVES THAT BLUE SKY OR MERIT REVIEW SHOULD BE RELIED UPON AS A BASIS OF REGULATION IN ONLY THE MOST EXTREME SITUATIONS.

IN THE CONTEXT OF THE FOREGOING COMMENTS, WHAT THEN ARE THE MECHANISMS BY WHICH MARKET EFFICIENCY CAN BE ENCOURAGED IN AN ENVIRONMENT OF PROVINCIAL REGULATION? I BELIEVE THAT THE ANSWER TO THIS QUESTION IS THREEFOLD.

FIRST, THERE IS THE NEED FOR UNIFORM OR AT LEAST NOT INCONSISTENT LEGISLATION. MANY WOULD SAY THAT UNIFORMITY IS THE EPITOMY IN THIS REGARD. MY OBSERVATIONS MAKE ME LESS SURE OF THIS APPARENT CONVENTIONAL WISDOM. UNIFORMITY IN THE CANADIAN CONTEXT MEANS THE ONTARIO SECURITIES ACT. THAT STATUTE HAS EVOLVED THROUGH A SERIES OF STUDIES AND REPORTS COMMENCING WITH THE KIMBER REPORT OF THE MID 1960's AND CULMINATING IN THE MERGER REPORT OF THE 1970's. THESE STUDIES CULMINATED IN THE 1978 OSA WHICH IS RECOGNIZED INTERNATIONALLY AS A WORTHY FRAMEWORK FOR SECURITIES REGULATION. TO THE BEST OF MY KNOWLEDGE THE OTHER JURISDICTIONS WHICH HAVE ADOPTED THE ONTARIO STATUTORY FRAMEWORK HAVE DONE SO WITHOUT THE BENEFIT OF STUDY OR ANALYSIS. SOME MAY SAY THAT A LEEMING MENTALITY MAY HAVE OVERTAKEN REASON. I BELIEVE THAT A STUDY SHOULD BE UNDERTAKEN TO DETERMINE WHETHER UNIFORMITY IS TRULY THE ANSWER. IF THE LEGISLATION IS NOT UNIFORM IT MUST AT LEAST BE CONSISTENT IN ORDER TO ACHIEVE MARKET EFFICIENCY.

SECONDLY, THE ADMINISTRATION OF SECURITIES LAWS MUST BE CONSISTENT THROUGHOUT CANADA. THIS IS LARGELY ACHIEVED THROUGH THE CANADIAN SECURITIES ADMINISTRATORS COMMITTEE - ACRONYM CSA. THE CSA IS COMPRISED OF THE SECURITIES REGULATORS OF EACH PROVINCE AND TERRITORY OF CANADA. IT HAS NO OFFICIAL STATUS. IT MEETS TWICE A YEAR AT WHICH TIME IT RECEIVES REPORTS FROM VARIOUS SUBCOMMITTEES.

THE SUBCOMMITTEES OF THE CSA UNDERTAKE SPECIFIC TASKS SUCH AS THE DEVELOPMENT OF NATIONAL POLICIES WHICH ARE SUBJECT TO THE APPROVAL OF THE CSA.

THIRDLY, IN MY OPINION IT IS ESSENTIAL TO MARKET EFFICIENCY AND EFFICIENT REGULATION THAT REGULATORS IN ONE PROVINCE BE IN A POSITION TO RELY UPON REGULATORS IN ANOTHER PROVINCE. IT IS SIMPLY UNREALISTIC IN THE CONTEXT OF A NATIONAL OFFERING BY A SENIOR ISSUER TO EXPECT THAT THE SECURITIES REGULATORS OF EACH JURISDICTION PERFORM THE SAME FUNCTION TO THE SAME EXTENT AS DO THE REGULATORS OF EVERY OTHER JURISDICTION. NOT ONLY IS THIS UNREALISTIC IT IS ALSO AN INEFFICIENT USE OF LIMITED RESOURCES IN EACH PROVINCE TO SAY NOTHING OF THE INEFFICIENCY WHICH IT IMPLIES FOR ISSUERS. OF NECESSITY JURISDICTIONS SUCH AS NOVA SCOTIA MUST RELY ON SENIOR JURISDICTIONS SUCH AS THE OSC IN PROSPECTUS REVIEWS FOR NATIONAL OFFERINGS BY SENIOR ISSUERS. IN SUCH OFFERINGS NOVA SCOTIA CAN BE EXPECTED TO DO NO MORE THAN TO REVIEW THE PROSPECTUS FROM THE POINT OF VIEW OF VARIANCES BETWEEN NOVA SCOTIA LAW AND ONTARIO LAW. FOR EXAMPLE, IN A PROSPECTUS CLEARED RIGHTS OFFERING THE SECURITIES WHICH ARE ISSUED ON THE EXERCISE OF THE RIGHTS ARE ISSUED UNDER THE EXEMPTION CONTAINED IN CLAUSE 57(1)(f)(iii) OF THE SECURITIES ACT AND ARE SUBJECT TO THE RESALE RESTRICTIONS IMPOSED BY SUBSECTION 57(7) AS MODIFIED BY SUBSECTION 57(8). IF THE ISSUER HAS NOT BEEN A NOVA SCOTIA REPORTING ISSUER FOR 12 MONTHS PRIOR TO THE ISSUANCE OF THE SECURITIES ON THE EXERCISE OF THE RIGHTS THEN THERE MAY BE RESALE RESTRICTIONS IN NOVA SCOTIA BUT NOT IN ONTARIO. THEREFORE THE PROSPECTUS SHOULD NOT BE RECEIPTED

IN NOVA SCOTIA UNLESS EITHER AN EXEMPTION ORDER IS OBTAINED OR THE RESALE RESTRICTIONS DISCLOSED. IT WILL BECOME READILY APPARENT THAT THESE REVIEWS ARE VERY NARROW IN SCOPE AND IMPLICITLY CONSIDERABLE RELIANCE IS PLACED ON THE AUTHORITIES OF OTHER JURISDICTIONS ALTHOUGH THERE IS NO STATUTORY BASIS FOR SUCH RELIANCE.

RELIANCE IS ALSO PLACED BY SECURITIES REGULATORS ON THE REGULATORS OF FINANCIAL INSTITUTIONS SUCH AS THE FEDERAL OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS. THIS RELIANCE IS INHERENTLY RECOGNIZED BY THE EXEMPTIVE PATTERN OF THE SECURITIES ACT WHICH EXEMPTS FROM THE PROSPECTUS AND REGISTRATION REQUIREMENTS THE INDEBTEDNESS OF CERTAIN FINANCIAL INSTITUTIONS. THE ASSUMPTION IS MADE THAT THE REGULATORS OF THESE INSTITUTIONS WILL DO THEIR JOBS. (VICE VERSA)

THE CONCEPT OF RELIANCE IS PERHAPS BEST ILLUSTRATED IN CROSS BORDER OFFERINGS BY THE RECENTLY ANNOUNCED INITIATIVE BETWEEN THE OSC, QSC AND SEC UNDERWHICH THE SEC WILL ALLOW CERTAIN SECURITIES TO BE OFFERED IN THE U.S. ON THE BASIS THAT THE SECURITIES HAVE BEEN CLEARED BY THE OSC OR QSC. THE SEC HAS INDICATED THAT SUCH OFFERINGS WILL BE GIVEN A NO REVIEW STATUS IN THE U.S. EFFECTIVELY THE SEC IS RELYING ON THE OSC AND QSC FOR THE REVIEW FUNCTION.

IN MY VIEW ANY WITHDRAWAL FROM THESE CONCEPTS OF RELIANCE BY ONE REGULATOR ON OTHER REGULATORS WILL RESULT IN LESS EFFICIENT REGULATION AND LESS EFFICIENT CAPITAL MARKETS.

THE PROBLEM IS THAT AT THE PRECISE TIME WHEN THE SECURITIES

MARKETS ARE BECOMING MORE NATIONAL AND INTERNATIONAL IN SCOPE AND GREATER RELIANCE MUST BE PLACED BY THE REGULATORS ON ONE ANOTHER THE REGULATORS ARE BEING CRITICIZED FOR THIS PRACTICE. IN PART THIS IS THE BASIS OF THE CLAIMS BY THE VICTIMS OF PRINCIPAL AGAINST JURISDICTIONS OTHER THAN ALBERTA. OTHER JURISDICTIONS ARE BEING CRITICIZED FOR HAVING RELIED ON ALBERTA REGULATORS.

WHAT THEN IS THE ANSWER TO THIS DILEMMA? I CERTAINLY DON'T PURPORT TO HAVE THE ANSWER ALTHOUGH I BELIEVE THAT SOME ASPECTS OF THE SOLUTION ARE OBVIOUS.

FIRST, SECURITIES LEGISLATION SHOULD SPECIFICALLY RECOGNIZE THE APPROPRIATENESS OF THE REGULATOR RELYING UPON OTHER REGULATORS WHERE IT DOES NOT APPEAR TO BE CONTRARY TO THE PUBLIC INTEREST TO DO SO AND IT IS OTHERWISE REASONABLE IN THE CIRCUMSTANCES TO DO SO. THIS WOULD FORECLOSE AN ALLEGATION THAT THE REGULATOR WAS NOT PROPERLY EXERCISING STATUTORY DISCRETION.

SECONDLY, SECURITIES LEGISLATION SHOULD SPECIFICALLY RECOGNIZE THE INDEPENDENCE OF THE REGULATOR AND ENSURE NO INTERFERENCE AT THE POLITICAL LEVEL. IT IS ONE THING TO RELY UPON OTHER REGULATORS AND ANOTHER TO RELY UPON REGULATORS WHO DO NOT HAVE THE REQUISITE DEGREE OF INDEPENDENCE.

THIRDLY, REGULATORS MUST BE FREE TO EXCHANGE INFORMATION AND BE PREPARED TO EXERCISE THAT FREEDOM AT THE FIRST SIGN OF DIFFICULTY.

FOURTHLY, GOVERNMENTS MUST BE PREPARED TO COMMIT ADEQUATE FUNDS TO SECURITIES REGULATION TO ALLOW THE REGULATORS TO FULFIL

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THEIR STATUTORY MANDATE. IT IS MISLEADING FOR GOVERNMENTS TO ENACT SOPHISTICATED LEGISLATION AND THEN UNDERFUND IT. TO PURPORT TO REGULATE AND NOT TO REGULATE IS WORSE THAN NOT PURPORTING TO REGULATE AT ALL.

Nova Scotia

Securities Commission

Joseph Howe Building
1690 Hollis Street
PO Box 458
Halifax, Nova Scotia
B3J 3J9

902 424-7768
Fax 902 424-4625

January 5, 1990
(Rev. Jan. 15)

Our file no:

Dr. Guy MacLean, Ombudsman
Province of Nova Scotia
Lord Nelson Building
Suite 300
5675 Spring Garden Road
Halifax, NS
B3J 1H5

Dear Dr. MacLean:

RE: First Investors Corporation Limited

It would of course be inappropriate for me to comment on or make representations to you in connection with your ongoing investigation of the complaint of "Victims of Principal" by virtue of the fact that your investigation involves an assessment of the conduct of the administrators of the previous securities legislation in Nova Scotia. I do however have an interest in your eventual report in that it will hopefully assist the public generally in understanding financial market regulation and the position which securities regulation plays in the overall regulatory scheme. In that context I would like to make the following observations:

1. Financial market regulation can be divided broadly into two categories. First, the regulation of financial institutions and quasi-financial institutions and secondly, the regulation of the securities markets. Financial institution regulation concerns the regulation of banks, trust companies, loan companies, insurance companies and in some jurisdictions quasi-financial institutions such as investment contract issuers. Securities regulation is concerned with the regulation of securities industry participants such as securities dealers and their employees and the regulation of disclosure in connection with the issuance of equity securities, debt securities and other securities except debt securities of regulated financial institutions and quasi-financial institutions.

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Financial institution regulation is divided between the federal government and provincial governments. The federal government, through the Office of the Superintendent of Financial Institutions, regulates banks and federally incorporated trust companies, loan companies and insurance companies. The provincial governments regulate provincially incorporated loan companies, trust companies and in some provinces investment contract issuers. Also some provinces regulate financial institutions which are incorporated in other jurisdictions but which carry on business within the regulating province. Financial institution regulation concerns itself with the "financial health" of the institution which is subject to regulation and is implemented through a series of capital adequacy requirements, investment restrictions and inspection mechanisms. In a perfect world regulated financial institutions would not experience insolvency but, of course, as history has taught us, the world is not perfect and no amount of regulation and rules can prevent abuses. It is in the context of the objective of insuring the financial health of financial institutions that the Canada Deposit Insurance Corporation provides insurance for depositors with certain regulated financial institutions.

2. Securities regulation recognizes the function of financial institution regulation and therefore the deposits and debt instruments of regulated financial institutions are exempted from the requirements of the securities legislation. The theory is that there is no need to have a second layer of regulation with respect to these financial institutions imposed by the securities regulators because the financial institution regulators have already assessed the financial condition of the issuing financial institution. In the context of those provinces where investment contract issuers are subject to financial institution regulation the investment contracts are carved out of and are not subject to the jurisdiction of the securities regulators. In provinces where there is no regulation of investment contract issuers the investment contracts are subject to securities regulation the same as any other securities.

3. As opposed to financial institution regulation which is concerned with the financial condition of the institution, securities regulation is primarily a disclosure-based and not a merit-based review system. In other words the function of securities regulation is not to review the disclosure documents with a view to determining whether the security in question is a sound investment but rather with a view to ensuring that there is proper disclosure of the risks associated with the investment. Even in

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a perfect world it is not expected that some issuers will not experience insolvency. It is only in exceptional cases that securities regulators will exercise their "merit" review authority to preclude the offering of any particular security in the market place. It is essential to appreciate this distinction between financial institution regulation and securities regulation. The distinction forms the underpinnings of a capitalistic economy. In a capitalistic economy it is essential that capital formation be allowed to proceed to provide the capital which fuels the economy. This necessitates that businesses have access to "high risk" or "speculative capital" otherwise progress and innovation will be thwarted. Consequently, if only "sound investments" can be sold in the market place there would never be risk taking and without risk taking there will not be innovation. It is therefore essential that the public recognize that the clearance of securities by the securities regulators does not constitute a guarantee of their investment worthiness or imply in any manner that the government stands behind the securities. The second aspect of securities regulation which concerns the registration of securities dealers is in part designed to ensure that investors will be advised by knowledgeable persons as to the appropriateness of a particular type of security investment for the investor's particular needs. For example, if the system operates properly the securities salesman will advise a pensioner that a speculative mining investment is not appropriate for a person who is looking for an investment which will provide an annual return.

4. As a result of the division of regulation of the financial markets between financial institution regulators and securities regulators and as a result of securities regulation being a matter of provincial jurisdiction (even though the capital markets know no provincial boundaries) it is essential that securities regulators be in a position to place reliance upon financial institution regulators and other securities regulators. Without this element of reliance the securities regulators in each province would require adequate resources to regulate financial institutions which offer services in the province and are subject to the regulation of other jurisdictions (both federal and provincial) as well as to duplicate the efforts of securities regulators in other jurisdictions. Reliance is therefore necessitated by practicality.

5. In my view the Nova Scotia government deserves credit for putting the new Securities Act in place and establishing a bureaucracy to administer it. Considerable progress has been made in this respect over the last two years.

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It must also be recognized however that it is not adequate to simply pass the necessary legislation. It is essential that the legislation be continuously reviewed and updated to reflect the rapid evolution of the securities market place at the present time and also to dedicate sufficient financial resources to ensure the proper administration of the legislation. Securities regulation should be self-funding in that the users of the system (ie. the securities industry and securities issuers) should pay the cost of operating the regulatory system through fees. The corollary of this is that the government should dedicate to securities regulation all fees which are generated by the system. Otherwise, the system simply becomes a method of raising general revenues.

I hope that the foregoing assists you in placing in context the issues with which you are concerned. In the end, the best investor protection consists of an informed and cautious public.

Yours very truly,

Robert B. MacLellan, Chairman

c: Honourable Thomas J. McInnis
D. William MacDonald